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INDEX

# INDEX.


Discipline Act 35
Documentary Evidence 41
Fisheries Act. 31 Vic. Cap 60 1
Comprising: Sawdust Act 12
Documentary Evidence 12
Extension to British Columbia 14
do. N. W. Territories 15
do. Prince Edward Id 16
do. Manitoba 17
Fisheries Act. Revised Statutes 18
Fishing by Foreign Vessels. 26. 29. 30. 32
Fishing Bounty Act 38
Fisheries Question; its history and that of Treaties in connection therewith 185
Fishery Exhibits. Catalogue 196
Navigable Waters. Protection of 39
Sawdust Act 39
Queen vs. Robertson 137
Treaty of 1818 130
do. Washington (1871) 59
do. do. (1888) 217
Treaty Articles by W. F. Whitcher 44

Imperial Despatches &c. re Treaty 1871. 76
Review President Grant's Message 1870. 105

# INDEX

# DOMINION OF CANADA.

# THE FISHERY ACTS.

REGULATIONS of the Governor General in Council, adopted from time to time under these Acts, are printed separately for action in the different localities to which they apply, after publication in the *Canada Gazette*.

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# 31 VICTORIA.

## CHAP. 60.

An Act for the regulation of Fishing and protection of Fisheries.

[*Assented to 22nd May*, 1868.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— Preamble.

### FISHERY OFFICERS.

**1.** The Governor may appoint Fishery Officers, whose powers and duties shall be defined by this Act and the Regulations made under it, and by instructions from the Department of Marine and Fisheries; and every Officer so appointed under oath of office, and instructed to exercise magisterial powers, shall be *ex-officio* a Justice of the Peace for all the purposes of this Act and the Regulations made under it, within the limits for which he is appointed to act as such Fishery Officer. Fishery Officers to be appointed. Powers and duties.

**2.** Each Fishery Officer shall take and subscribe the following oath:— Oath of office.

"I. A. B., a Fishery Officer in and for the district described Form.
"in my appointment, do solemnly swear, that to the best of
"my judgment I will faithfully, honestly and impartially
"fulfil, execute and perform the office and duty of such
"Officer, according to the true intent and meaning of the
"Fisheries Act and Regulations, and in accordance with my
"instructions. So help me God."

### FISHERY LEASES AND LICENSES.

**2.** The Minister of Marine and Fisheries may, where the exclusive right of fishing does not already exist by law, issue or authorize to be issued fishery leases and licenses for Fishery leases and licenses.



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If for more than nine years.

fisheries and fishing wheresoever situated or carried on; but leases or licenses for any term exceeding nine years shall be issued only under authority of an Order of the Governor in Council.

DEEP SEA FISHERIES.

As to right to use vacant public property for fishing purposes, and as to taking bait, &c.

**3.** Every subject of Her Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation, for the purposes of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it shall have been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of flakes and stages, and other property thereon of which he may take possession, or the buildings and improvements may be removed by the original owner; and all subjects of Her Majesty may take bait or fish in any of the harbours or roadsteads, creeks or rivers, subject always, and in every case, to the provisions of this Act as affects the leasing or licensing of fisheries and fishing stations; but no property leased or licensed shall be deemed vacant.

Proviso.

COD FISHERY.

Nets for taking cod.

**4.** No one shall use mackerel, herring or caplin seines for taking codfish, and no codfish seine shall be of a less sized mesh than four inches in extension in the arms, and three inches in the bunt or bottom of the seine.

WHALE FISHERY.

Whales, &c., not to be killed by rockets or shells. Penalty.

**5.** Whales, seals and porpoises shall not be hunted or killed by means of rockets, explosive instruments or shells, under a penalty not exceeding three hundred dollars, or at least three months, and not exceeding six months, imprisonment in default of payment.

SEAL FISHERY.

Sedentary fisheries not to be disturbed.

**6.** During the time of fishing for seals no one shall, with boat or vessel, knowingly or wilfully, disturb, impede or injure any sedentary seal fishery, nor prevent, hinder, or frighten the shoals of seals coming into such fishery, under a penalty not to exceed sixty dollars for each offence, or imprisonment in default of payment not exceeding one month: the defendant, being also liable for damages, to be adjudged by any Fishery Officer or other magistrate before whom the injured party may complain:

Penalty.

2. Disputes between occupiers of seal fisheries concerning limits and the mode of fishing or setting nets, shall be decided summarily by any Fishery Officer or other magistrate, on the report of arbitrators, and any damages assessed or accrued, or that may afterwards arise out of a repetition or continuance of the difficulty ordered to be remedied, may be levied under the warrant of any Fishery Officer or other magistrate. Disputes as to seal fisheries, how settled.

SALMON FISHERY.

7. Salmon shall not be fished for, caught or killed, between the thirty-first day of July and the first day of May, in the Provinces of Ontario and Quebec, and in the River Restigouche, and between the fifteenth day of August, and the first day of March in the Province of New Brunswick; Provided always, that it shall be lawful to fish for, catch and kill salmon with a rod and line, in the manner known as fly surface fishing, between the thirtieth day of April and the thirty-first day of August, in the Provinces of Ontario and Quebec, and between the first day of March and the fifteenth day of September, in the Province of New Brunswick: Close season for salmon. Proviso as to fly surface fishing.

2. Salmon shall not be fished for, caught or killed in the Province of Nova Scotia, save as provided and authorized by the laws now in force in that Province: In Nova Scotia.

3. Foul or unclean salmon shall not be at any time caught or killed: Foul Salmon.

4. Salmon fry, parr and smolt, shall not be at any time fished for, caught or killed, and no salmon or grilse of less weight than three pounds shall be caught or killed; but where caught by accident in nets lawfully used for other fish, they shall be liberated alive at the cost and risk of the owner of the fishery, on whom shall, in every case, devolve the proof of such actual liberation: Fry, parr, or smolt not to be killed.

5. Meshes of nets used for capturing salmon, shall be at least five inches in extension, and nothing shall be done to practically diminish or nullify their size: Size of meshes of salmon nets.

6. The use of nets or other apparatus which capture salmon shall, except in the Provinces of Nova Scotia and New Burnswick, be confined to tidal waters, and any Fishery Officer may determine the length and place of each net or other apparatus used in any of the waters of the Dominion; provided that nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of the Province of Ontario, nor preclude the Minister from authorizing, by special fishery licenses or leases, the capture of salmon by nets in fresh water streams: Use of nets regulated. Proviso as to Ontario, &c.

Boundaries of estuary fishing to be defined. Penalty for fishing above limits, except with a rod and line, &c.

7. The Minister, or any Fishery Officer authorized to such effect, shall have power to define the tidal boundary of estuary fishing for the purposes of this Act; and above the actual limit so to be laid down, it shall be unlawful, without the special fishery lease or license above provided for, to fish for salmon, except with a rod and line, in the manner known as fly surface fishing, under a penalty not to exceed one hundred dollars, and imprisonment in default of payment for any term not exceeding two months:

Distance of nets apart, &c.

8. All nets, or other lawful appliances which capture salmon, shall be placed at distances of not less than two hundred and fifty yards apart, without intermediate fishing materials of any kind being set or used in and about any other part of the stream; and drifting for salmon shall be illegal:

Further distance may be prescribed.

9. Any Fishery Officer may prescribe either in writing or orally on sight, if deemed necessary, a further distance apart to be left between salmon nets, or other fishing apparatus, and their dimensions and extension; but gill or float nets shall not be used to lengthen, extend or enlarge any other kind of fishery:

Proviso.

As to spawning rivers.

10. No salmon shall be captured within two hundred yards of the mouth of any tributary, creek or stream which salmon frequent to spawn:

Mode of killing at certain places.

11. Except in the manner known as fly surface fishing with a rod and line, salmon shall not be fished for, caught or killed by any artificial pass or salmon leap, nor in any pool where salmon spawn:

Salmon spawn.

12. Except under the authority and for the special purpose provided for in this Act, no one shall take, buy, sell, destroy, use or possess any salmon roe, nor injure any spawning bed.

## LAKE AND RIVER TROUT FISHERY.

Not to be killed in certain ways and at certain seasons.

8. It shall not be lawful to fish for, catch or kill any kind of trout (or "lunge") in any way whatever between the first day of October and the first day of January; and no one shall, at any time, fish for, catch or kill trout by other means than angling by hand with hook and line, in any inland lake, river or stream, except in tidal waters; Provided always, that as affecting the waters of the Province of Ontario, such prohibitions shall apply only to the kind known as "speckled trout:"

Proviso.

Speckled trout.

Exception as to fish used for bait, &c.

2. Nothing in the above clause shall prevent the use of small sized trout for the *bonâ fide* purpose of baiting traps,

nor affect the taking and using the same by fishermen as bait for codfishing in tidal waters, nor subject them to penalty if by accident in *bonâ fide* fishing for herrings or white-fish by means of nets, trout shall become enclosed or taken.

WHITE-FISH AND SALMON TROUT FISHERY.

Close season for white fish.

**9.** It shall not be lawful to fish for or catch white-fish in any manner between the nineteenth day of November and the first day of December, nor by means of any kind of seine, between the thirtieth day of May and the first day of August, in the Province of Ontario, or between the thirty-first day of July and the first day of December in the Province of Quebec, nor shall the fry of the same be at any time destroyed.

Gill nets.

2. Gill nets for catching salmon trout or white-fish, shall have meshes of at least five inches extension measure; and gill nets shall not be set within two miles of any seining ground:

Seines.

3. Seines for catching white-fish shall have meshes of not less than four inches extension measure.

BASS AND PICKEREL FISHERY.

Close season.

**10.** Close-seasons for bass, pike, pickerel (*dorée*), maskinongé and other fish, may be fixed by the Governor in Council to suit different localities.

POSSESSION OF FISH.

Prohibition to buy, sell, or have in close season.

**11.** No one shall, without lawful excuse, the proof of which shall devolve wholly on the party charged, buy, sell or possess any fish named in this Act, or parts thereof, caught or killed during seasons when and by means whereof catching or killing the same is prohibited by law:

Certain officers to seize fish exposed for sale in close season.

2. It shall be the duty of every customs officer, excise officer, police officer or constable, clerk of a market or other party in charge of any market place in any village, town or city, to seize and forfeit on view to his own proper use, or gift, any fish enumerated in this act, caught or killed during prohibited seasons, or which appears to have been killed by unlawful means; but every such seizure and appropriation, with the date, place and circumstance thereof, shall be duly reported together with the name, residence and calling of the person in whose possession such fish was found, to the Fishery Officer having jurisdiction over the district within which such seizure, forfeiture and appropriation have taken place.

And report the same.

CONSTRUCTION OF FISHWAYS.

To be made where and in such manner as Fishery Officer may determine.

**12.** Every dam, slide, or other obstruction across or in any stream where the Minister may determine it to be necessary for the public interest that a fish-pass should exist, shall be provided by the owner or occupier with a durable and efficient fishway, to be maintained in practical and effective condition, in whatever place and of whatever form and capacity will admit of the passage of fish through the same, (which place, form and capacity any Fishery Officer may, by written notice, determine) under a penalty of four dollars for each day during which any such obstruction remains unprovided with a fishway, after three days' notice in writing to the owner or occupier thereof:

Penalty for contravention.

To be kept open, &c.

2. Fishways shall be kept open and unobstructed and be supplied with a sufficient quantity of water to fulfil the purposes of this enactment, during such times as may be required by any Fishery Officer:

Minister may pay one-half the cost.

3. The Minister may authorize the payment of one-half of the expenses incurred by such owner or occupier in constructing and maintaining any fishway:

May construct and recover the cost in certain cases.

4. Should it be expedient to procure the construction of any fishway pending proceedings against any owner or occupier for the penalty imposed by this Act, the Minister may give directions to make and complete the same forthwith, and to enter upon the premises with the necessary workmen, means and materials, and may recover from the owner or occupier the whole expense so incurred by action before any competent tribunal:

Not to be obstructed or injured.

5. No person shall injure or obstruct any fishway, nor do anything to deter or hinder fish from entering and ascending or descending the same, nor injure or obstruct any authorized barrier.

GENERAL PROHIBITIONS.

Penalty for fishing in limits leased to another.

**13.** Whosoever fishes for, takes, catches or kills fish in any water, or along any beach, or within any fishery limits described in any lease or license, or places, uses, draws or sets therein any fishing gear or apparatus, except by permission of the occupant under such lease or license for the time being, or disturbs or injures any fishery, shall incur a penalty not exceeding one hundred dollars with costs, or imprisonment not exceeding two months, and the forfeiture of fishing apparatus so used, and all fish taken or caught; and any Fishery Officer or any such lessee or licensee may, upon his own view, forthwith seize and remove any net or apparatus so used in trespass, to be afterwards dealt with

Right of lessee, &c.

according to law: Provided always, that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing shall not interfere with the taking of bait used for codfishing, nor prevent angling for other purposes than those of trade and commerce: Proviso: as to taking bait or angling.

2. Seines, nets or other fishing apparatus, shall not be set in such a manner or in such places as to obstruct the navigation with boats and vessels; and no boats or vessels shall be permitted to destroy or wantonly injure in any way, any seines, nets or other fishing apparatus lawfully set: Navigation not to be obstructed.

3. Stakes or other timber placed for fishing purposes in any water shall be removed by the user within forty-eight hours after last using the same, or at the expiry of the fishing season: Stakes to be removed.

4. The main channel or course of any stream shall not be obstructed by any nets or other fishing apparatus; and one-third of the course of any river or stream, and not less than two-thirds of the main channel at low tide, in every tidal stream shall always be left open, and no kind of fishing apparatus or material shall be used or placed therein; provided that weirs used exclusively for catching eels, and the usage of mill-dams for catching eels, shall be subject to interference only in cases where, and at times when, they injure other fisheries, or by completely barring any passage, shall deprive other weirs of a share in the run of eels; and such place, time and circumstances may be determined by any Fishery Officer: Main channels not to be obstructed. Proviso: as to eel fishing.

5. No net or other device shall be so used as entirely to obstruct the passage of fish to and from any of the waters of the Dominion by any of the ordinary channels connecting such waters, or debar their passage to and from accustomed resorts for spawning and increasing their species: No net, &c., to obstruct entirely the passage of fish.

6. The catching, killing or molesting of fish when passing or attempting to pass through any fishway, or fish-pass, or in surmounting any obstacle or leaps—the use of any invention to catch, kill or molest fish in the mill-heads and water-courses appurtenant thereto, are hereby forbidden: Killing fish at certain places forbidden.

7. Bag-nets and trap-nets and fish-pounds are prohibited, except under special licenses for capturing deep-sea fishes other than salmon: Certain nets forbidden.

8. It shall not be lawful to fish for, catch or kill salmon, trout (or "lunge") of any kind, maskinongé, winnoniche, bass, bar-fish, pickerel, white-fish, herring or shad by means of spear, grapnel hooks, negog or nishagans: Provided, the Minister may appropriate and license or lease certain waters Fish not to be killed in certain ways.

Proviso: as to Indians.

in which certain Indians shall be allowed to catch fish for their own use in and at whatever manner and time are specified in the license or lease, and may permit spearing in certain localities:

Young of fish not to be taken.

9. No person shall fish for, catch, kill, buy, sell or possess the young of any of the fish named in this Act, or in any Regulation or Regulations under it:

Seines for bar-fish.

10. Seines for bar-fish shall have meshes of not less than three inches extension measure;

Distance between fisheries.

11. Fishery Officers may determine or prescribe the distance between each and every fishery, and shall forthwith remove any fishery which the owner neglects or refuses to remove, and such owner shall be moreover liable for a breach of this Act, and for the cost and damages of removing the same:

Fascine fisheries with box-traps.

12. Every fascine fishery with a box-trap (*coffre*), instead of pound, shall have across the outside end of such box (*coffre*) a wire covering or a net work, the meshes of which shall be at least one inch square; but this shall not apply to eel wires during autumn:

Nets, &c., in small rivers.

13. Nets or other fishing apparatus shall not be so used as to impede or divert the course of fish in any small rivers:

Fish to be allowed free passage on Sunday.

14. From the time of low water nearest six of the clock in the evening on every Saturday, to the time of low water nearest six of the clock in the morning on every Monday, in tidal waters, and from six of the clock in the evening on every Saturday to six of the clock in the morning of the following Monday, in fresh water,—seines, nets, or other apparatus used for catching fish shall be so raised or adapted as to admit of the free passage of fish through, past, or out of the same, for the purpose of affording, a free pass from six of the clock on every Saturday evening to six of the clock on every following Monday morning; and during this close time it shall be unlawful to catch fish by such means; and

And forfeited if then taken.

any fish so taken, caught or killed, together with the nets or other apparatus used, shall be forfeited, in addition to the penalties imposed by this Act.

INJURIES TO FISHING GROUNDS AND POLLUTION OF RIVERS.

Penalty for throwing overboard certain substances prejudicial to fisheries.

**14.** Whoever throws overboard ballast, coal, ashes, stones or other prejudicial or deleterious substances, in any river, harbour or roadstead, or any water where fishing is carried on, or throws overboard or lets fall upon any fishing bank or ground, or leaves, or deposits, or causes to be thrown, left, or deposited upon the shore, beach or bank of any water, or

upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any salmon river, remains or offals of fish, or of marine animals, or leaves decayed, or decaying fish in any net or other fishing apparatus, shall incur for any such offence a fine not exceeding one hundred dollars, or imprisonment for not more than two months; and every person so doing, whether master or servant, and the master or owner of any vessel or boat from which such ballast, or offals or other prejudicial substance are thrown, shall severally become liable for each offence: Provided always, that it shall be lawful to bury such remains, or offals ashore, beyond high water mark, and at establishments situated inside of the mouth of rivers, for carrying on deep sea fisheries, to drop the same into perforated boxes or inclosures built upon the beach, or under stage-heads, in such manner as to prevent the same from being floated or drifted into the streams, or to dispose of them in such other manner as may be prescribed by any Fishery Officer:

Proviso: as to the disposal of offal.

2. Lime, chemical substances or drugs, poisonous matter, (liquid or solid), dead or decaying fish; or any other deleterious substance, shall not be drawn into, or allowed to pass into, be left or remain in any water frequented by any of the kinds of fish mentioned in this Act; and saw-dust or mill-rubbish shall not be drifted or thrown into any stream frequented by fish, under a penalty not exceeding one hundred dollars: Provided always, that the Minister shall have power to exempt from the operation of this sub-section, wholly or from any portion of the same, any stream or streams in which he considers that its enforcement is not requisite for the public interest:

Poisonous substances not to be used.

Mill rubbish. Saw-dust.

Proviso: Minister may exempt any stream, &c.

3. Whoever at any time between the first day of June and the thirtieth day of September, of any year, kindles, makes or places any fire in or near any wood, trees, brushwood or any wild or uncultivated land, at any place north of the River or Gulf of St. Lawrence, to the east or north of the Saguenay River, or any of the islands below or to the eastward of Red Island, within the said river or gulf, whereby the fire spreads or extends through standing trees, brushwood or scrub, to a distance exceeding one arpent, shall, for such offence, incur a penalty not exceeding fifty dollars, and shall besides be responsible to the Crown, or whoever may be the owner of the land, for all damages occasioned by such fire: Provided, that nothing herein contained shall prevent proprietors or those having licenses to cut timber or wood from burning the wood, trees or brushwood on their own land, or otherwise using fire to clear their lands without injury or prejudice to their neighbours.

Penalty for kindling fires in certain places at certain times.

Proviso: as to burning for clearance.

MISCELLANEOUS PROVISIONS.

Waters may be set apart for the propagation of fish.

**15.** The Minister may authorize to be set apart, and to be leased, any river or other water for the natural or artificial propagation of fish; and any person who wilfully destroys or injures any place set apart or used for the propagation of fish or fishes therein, without written permission from a Fishery Officer, or from the holder under lease or license, or uses therein any fishing light or other implement for fishing, during the period for which such waters are set apart, shall incur a fine not exceeding two hundred dollars, or in default of payment, shall be imprisoned for not more than four months:

Penalty for trespass.

Licenses to take spawn, &c.

2. Nothing contained in this Act shall preclude the granting by the Minister of written permission to obtain fish and fish spawn, for purposes of stocking or artificial breeding, or for scientific purposes:

Fishery lessees in arrears.

3. Lessees or licensees of fisheries shall have no claim to renewal of leases or licenses, if in arrears of rent or percentage, during four months after the same is due, and any lessee or licensee convicted of an infraction of this Act, or any Regulation or Regulations under it, shall be liable to forfeit his lease or license:

Special licenses for oyster beds.

4. Special licenses and leases for any term of years may be granted to any party or parties who may wish to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers, or between any of the islands on the coast of Canada: and the holder of any such lease or license shall have the exclusive right to oysters produced or found on the beds, within the limits of such license, for the term of such lease:

Minister may expend Parliamentary grant for making or restocking oyster beds.

5. The Minister may authorize to be expended annually any sum appropriated by Parliament, for the formation of oyster beds in various waters and places found adapted for that purpose, and transplanting oysters, and towards restocking exhausted fisheries by natural or artificial means, and to improve streams where natural obstructions exist, and may authorize the construction, erection or placing of any artificial barrier or grating in any stream or river, or in any watercourse, and in the channels or beds thereof:

Protection of oyster beds.

6. With a view to protect the oyster beds in different parts of the bays and coasts of the Dominion, it shall not be lawful for any person to take oysters, or in any way to injure or disturb such oyster beds, except during times and on terms permitted by Regulation or Regulations under this Act, under a penalty of not more than one hundred dollars nor less than forty dollars together with the forfeiture of the

Penalty for injuring them.

vessel and all the apparatus employed therein; and in default of payment, the party convicted shall be imprisoned for not less than one month, nor more than two months:

Shell-fish fisheries.

7. Shell-fish fisheries shall be subject to the provisions of this Act, and any Regulation or Regulations to be made under it.

FINES AND FORFEITURES.

Penalty in cases where no other is provided.

**16.** Except for offences to which penalties are already attached, each and every offender against the provisions of this Act, or the Regulations under it, shall for each offence incur a fine of not more than twenty dollars, besides all costs; and in default of payment of each fine, shall be imprisoned in each case for not less than eight days, and not exceeding one month: Provided, whenever it shall appear to the satisfaction of the convicting magistrate, that the offence has been committed in ignorance of the law; and that because of the poverty of the defendant, the penalty imposed would be oppressive, a discretionary power may be exercised: and any Fishery Officer or other magistrate may grant a warrant of distress for the amount of fine and costs imposed in any case:

Proviso: discretionary power in certain cases.

Separate offence on each day.

2. The contravention on any day of any of the provisions of this Act, or of any Regulation made under it, shall constitute a separate offence, and may be punished accordingly:

Distress for penalty, &c.

3. Should any defendant have goods and chattels whereon the costs may be levied, the complainant may distrain for the amount under warrant by any Fishery Officer, or other magistrate, notwithstanding the imprisonment of the party convicted and fined:

Forfeiture of articles used in contravention of this Act.

4. All materials, implements or appliances used, and all fish had in contravention to this Act or any Regulation or Regulations under it, shall be confiscated to Her Majesty, and may be seized and confiscated on view by any Fishery Officer, or taken and removed by any person for delivery to any magistrate, and the proceeds of disposal thereof may be applied towards defraying expenses under this Act:

Appropriation of pecuniary penalties.

5. One moiety of every fine or penalty levied by virtue of this Act, shall belong to Her Majesty, and the remaining half thereof shall be paid to the prosecutor, together with the costs taxed to him for attendance as a witness or otherwise;

How to be applied.

6. Her Majesty's share of each fine or penalty and all proceeds derived from the sale of confiscated articles under this Act, shall be paid to the Receiver General through the De-

partment of Marine and Fisheries, and be applied towards the expenses incurred for the protection of Fisheries: and

Appeal to Minister.

persons aggrieved by any such conviction may appeal by petition to the Minister, who shall have power to remit fines and restore forfeitures under this Act.

MODE OF RECOVERY.

Before whom to be sued for.

**17**. Each penalty or forfeiture imposed by this Act, or Regulations made under it, may be recovered, on parole complaint, before any Fishery Officer, stipendiary or other magistrate, in a summary manner on the oath of one credible witness:

Service of Summons, &c.

2. Three days shall elapse between the service and the return of summons to any defendant for the first five leagues, and one day more for each additional five leagues of the distance between the place at which the summons is dated and the place of service: Provided that when it is expedient to

Proviso: for cases not admitting delay.

proceed against a defendant without delay, any Fishery Officer or other magistrate may issue a summons, returnable immediately, to compel the defendant to appear before him forthwith, or may issue a warrant for the apprehension of such defendant simultaneously with the summons:

Limitation of suits.

3. Penalties incurred under this Act, or the Regulations made under it, shall be sued for within two years from the commission of the offence:

Who shall be liable.

4. When not otherwise specified, every proprietor or proprietress, owner, agent, tenant, occupier, partner or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for penalties or moneys recoverable under any of the provisions of this Act or any Regulation or Regulations under it:

No quashing for want of Form, &c.

5. No proceeding under this Act or under any Regulation or Regulations made under it shall be dismissed, and no conviction thereunder shall be quashed for want of form; nor shall any warrant of arrest or commitment be held void by reason of any defect therein, provided it is therein alleged that the party has been convicted and there is a good and valid conviction to sustain the same.

POWERS OF FISHERY OFFICERS AND OTHER MAGISTRATES.

Fishery officer may convict on view.

**18**. Any Fishery Officer or other magistrate may convict upon his own view of any of the offences, both as infractions and for non-compliance, punishable under the provisions of this Act; and shall remove, or cause to be removed instantly and detain any materials illegally in use:

2. Any Fishery Officer or other magistrate may search, or shall grant a warrant to have searched, any vessel or place where there is cause to believe that any fish taken in contravention of this Act, or anything used in violation thereof, may be concealed: May cause search to be made.

3. When any offence under this Act is committed in, upon or near any water forming the boundary between different counties or districts, or fishery districts, such offence may be prosecuted before any magistrate in either of such counties or districts, or before the Fishery Officer for either contiguous fishery district: In what locality to be prosecuted.

4. In the discharge of his duties any Fishery Officer, or any other person by him accompanied or authorized to such effect, may enter upon and pass through or over private property without being liable for trespass: Right of Fishery Officer to pass over lands.

5. Disputes between parties relative to fishing limits or claims to fishery stations, or position and usage of nets and other fishing apparatus, shall be settled by the local Fishery Officer: Disputes as to boundaries.

6. Gurry-grounds may be designated or defined by any Fishery Officer: Gurry-grounds.

7. Any Fishery Officer, stipendiary magistrate, or commissioned officer of Her Majesty's Navy, on board of any vessel belonging to or chartered by the Canadian Government, employed in the service of protecting fisheries, and each commissioned officer of Her Majesty's Navy serving on board of any vessel cruising and being in the waters, harbours or ports of Canada, for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, and to enforce any laws relating to such fisheries, shall exercise magisterial powers in all the waters, harbours or ports, and on all the coasts of the Dominion of Canada where for the time being and for the purposes above decribed they are so engaged, without property qualification, and without taking any oath of office: Certain Officers in the Canadian or British Navy to have magisterial powers under this Act.

8. Seizures made by any Fishery Officer, Stipendiary Magistrate or Naval Officer, so acting as aforesaid, may be taken for disposal to the nearest or most convenient port where there shall reside any revenue officer or other public officer empowered to dispose of the case: Seizures, how to be dealt with.

9. Whenever it may be impracticable for any Fishery Officer, Stipendiary Magistrate or Naval Officer acting in such capacity, to cause any prisoner or prisoners to be conveyed to, and committed to the nearest common gaol, he Powers of Fishery Officer, &c., for the detention of prisoners when he can-

not convey them to gaol.

shall have power to detain him or them on board of the vessel, or transfer him or them to another vessel for conveyance and delivery at the most convenient place, and with all convenient despatch, where he or they can be duly committed into the custody of the Sheriff or other officer of the county or district in which the common gaol is situated, to which he or they shall be ordered to be committed; and until such prisoner or prisoners shall be so delivered into the immediate custody of any sheriff or Gaoler, the Fishery Officer, Stipendiary Magistrate or Naval Officer having him or them in charge, shall have in all parts through which it may be necessary to convey any prisoner or prisoners, the same authority and power over and in regard to such person or persons and to command the aid of any of Her Majesty's subjects in preventing his or their escape, or in retaking him or them in case of escape, as any county or district sheriff or peace officer would have while lawfully conveying a prisoner from one part to another of his own district:

Where the offence shall be held to have been committed.

10. The offence for which any person or persons may be so committed to any common gaol shall always be held to have taken place in the county or district to the common gaol of which the commitment has been actually made.

FISHERY REGULATIONS.

Governor in Council may make fishery regulations.

**19**. The Governor in Council may, from time to time, make, and from time to time vary, amend or alter, all and every such Regulation or Regulations as shall be found necessary or deemed expedient for the better management and regulation of the sea-coast and inland fisheries, to prevent or remedy the obstruction or pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish and to forbid fishing except under authority of leases or licenses,—every of which Regulations shall have the same force and effect as if herein contained and enacted, notwithstanding that such Regulations may extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing, or the terms specified as prohibited or close seasons, and may fix such other modes, times or places as may be deemed by the Governor in Council to be adapted to different localities, or may be thought otherwise expedient:

And may thereby vary certain provisions of this Act.

Publication and proof of regulations.

2. The publication of such Regulations in the *Canada Gazette*, shall be sufficient notice to give legal effect to the same; and the production of a copy of a paper purporting to be the "Canada Gazette," and containing any such Regulation or Regulations, shall be admitted as full and sufficient evidence of the same in all courts of law or equity in Canada:

3. Every offence against any Regulation or Regulations made under this Act may be stated as in contravention of the *Fisheries Act*. Stating offences against this Act.

PROVINCIAL ACTS AND REGULATIONS REPEALED OR CONTINUED.

**20**. The following Acts and parts of Acts are hereby repealed:— Acts and parts of Acts repealed.

The Act passed by the legislature of the late Province of Canada (29 Vict., Chap. 11) intituled "*An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, and to provide for the better regulations of Fishing and protection of Fisheries*," and also the several sections of the said sixty-second chapter of the Consolidated Statutes of Canada therein excepted from repeal: Provided always, that the Regulations of 7th May, 1859, adopted under chapter 62 of the said Consolidated Statutes of Canada, and relating to fisheries at and around the Magdalen Islands, and the Regulations of 4th August, 1866, 9th August, 1866, and 26th April, 1867, adopted under the Statute 29 Victoria Chap. 11, shall continue in force in the Provinces of Quebec and Ontario, until amended or superseded by other regulations under this Act: Can. 29 V., c. 11. Proviso: as to certain regulations.

The Act passed by the legislature of the Province of New Brunswick (23 Vict., Chap. 52) intituled "*An Act relating to the Fisheries of the County of Restigouche*"; N. B. 23 V., c. 52.

The Act passed by the said legislature (26 Vict., Chap. 6) intituled "*An Act relating to the Coast and River Fisheries*"; N. B. 26 V., c. 6.

The Act passed by the said legislature (30 Vict., Chap. 14) intituled "*An Act to encourage the formation of Oyster Beds*"; but any Regulation or Regulations made under either of the three last mentioned Acts, and not inconsistent with the provisions of the present Act, shall remain in force in the Province of New Brunswick until amended or superseded by Regulation or Regulations to be made under this Act, and shall be subject in every respect to the authority by this Act vested in the respective Fishery Officers appointed under this Act, who are hereby empowered to enforce the same. N. B. 30 V., c. 14. Proviso: as to regulations under it.

**51**. The following Acts shall continue in force in the Provinces of New Brunswick and Nova Scotia:— Acts continued in N. B. and N. S.

An Act passed by the legislature of the Province of New Brunswick (16 Vict., Chap. 69) intituled "*An Act relating to the Coast Fisheries, and for the prevention of Illicit trade*"; N. B. 16 V., c. 69.

N. S. Revised Stat. c. 94.

Chapter 94, Revised Statutes, *third series*, "*of the Coast and Deep Sea Fisheries*," as amended by subsequent Acts of the Legislature of Nova Scotia: Provided always, that such Fishery Officers as may be especially empowered in that behalf by the Governor in Council, shall also exercise the powers by the said recited Acts and chapter of Acts vested in Revenue and other Officers, Sheriffs, Magistrates, and all penalties and forfeitures imposed under the same shall be paid over to the Receiver General through the Department of Marine and Fisheries to be applied towards the Fisheries Protection Service in like manner as other fines and confiscations under the present Act;

Proviso: certain powers under that Act may be exercised by Fishery Officers.

Same, c. 95.

Chapter 95 of the Revised Statutes of Nova Scotia, *third series*, "*Of River Fisheries;*"

N. S. 28 V., c. 35.

The Act (28 Vict., Chap. 35) intituled "*An Act to amend Chapter 95 of the Revised Statutes, 'Of River Fisheries;'*"

N. S. 29 V., c. 35.

The Act (29 Vict., Chap. 35) intituled "*An Act to amend Chapter 94 of the Revised Statutes 'Of the Coast and Deep Sea Fisheries;'*"

N. S. 29 V., c. 36.

The Act (29 Vict., Chap. 36) intituled "*An Act to amend Chapter 95 of the Revised Statutes 'Of River Fisheries;'*"

And regulations under them.

And all Regulations adopted in pursuance of the said chapter of the said Revised Statutes or of the said Acts amending the same shall remain in force until amended or superseded by any Regulation or Regulations under this Act;

Proviso; as to the exercise of powers under the said Acts.

Provided always, that the powers and duties in the above named chapters and Acts devolving on the Governor in Council under the said Acts, shall vest in the Governor of Canada in Council, and the powers and duties belonging to the General or Special Sessions, and the Grand Jury, shall, as effects the making of any Regulation or Regulations, order or orders, be vested in the Governor General in Council, and as affecting the appointment and control of Fishery Inspectors or Wardens, and the declaring of exemptions, shall vest in the Minister; and any Fishery Officer or Officers appointed under this Act shall fulfil the duties of Fishery Inspectors of Wardens, and exercise the functions which by the said above recited chapters and Acts attach to justices and sheriffs, for all the purposes of the aforesaid chapters and Acts or any such Regulation or Regulations;

Fishery Officers may perform certain duties.

Fishery Officers to exercise powers under Rev. Stat. N. S. c. 103.

Each and every Fishery Officer shall also exercise the power and perform the duty assigned to Commissioners or Overseers of River Fisheries by the second section of Chapter 103, of the Revised Statutes (*third series*) of the Province of Nova Scotia;

22. All fines and penalties levied under the several chapters and Acts recited, or under any Regulation or Regulations referred to in the two next preceding sections, shall be disposable in the same manner as if imposed and levied under the present Act. As to penalties under the said Acts.

FORMS OF PROCEDURE.

23. Forms of proceedings, Orders and Notices used under this Act and Regulations, may for respective processes be in the forms prescribed in the Schedule hereunto annexed, or in any other form; and in other respects the laws relating to summary convictions and orders, shall apply to cases under this Act. Forms of proceedings under this Act.

24. This Act shall be known and cited as "*The Fisheries Act.*" Short Title.

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SCHEDULE A.

*Form of Complaint.*

Province of
County (*or* District) of }

This day of , 18

To J. S., a Justice of the Peace for the said County (or District).

A. B., of , complains that C. D. of , hath (*state the offence briefly in any intelligible terms with the time and place at which it was committed,*) in contravention of the Fisheries Act; Wherefore the complainant prays that judgment may be given against the said C. D., as by the said Act provided.

(*Signature*) A. B.

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SCHEDULE B.

*Summons to Defendant.*

Province of
County (*or* District) of 18 }

To C. D., of , &c.

Whereas complaint has (*this day*) been made before me that you (*state the offence in the words of the complaint, or to*

*the like effect*) in contravention of the Fisheries Act: Therefore you are hereby commanded to come before me, at on the day of , at o'clock in the to answer the said complaint and to be dealt with according to law.

Witness my hand and seal, this day of , 18

J. S.,
Justice of the Peace for
[L. S.]

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## SCHEDULE C.

*Subpœna to a Witness.*

Province of
County (*or* District of

To E. F., of &c.

Whereas complaint has been made before me that C. D. did (*state the offence as in the Summons*), and I am informed that you can give material evidence in the case: Therefore, you are commanded to appear before me, at , on the day of , at o'clock in the , to testify what you know concerning the matter of the said complaint.

Witness my hand and seal, this day of 18

J. S.,
(*as in Summons.*)
[L S.]

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## SCHEDULE D.

*Form of Conviction.*

Province of
County (*or* District) of

Be it remembered, that on this day of 18 , at in the said County (*or* District), C. D., of is convicted before me, for that he did, &c., (*stating the offence briefly and the time and place where committed*), in contravention of the Fisheries Act; And I adjudge the said C. D. to forfeit (and pay) the sum of (*or mention the thing forfeited under this Act*), to be applied according to law, and also to pay A. B., (*the complainant*) the sum of for costs:

(*If the penalty be not forthwith paid, add*), and the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the Common Gaol of the County (*or* District) of for the period of

Witness my hand and seal, this day of , 18

J. S.,
(*as in summons.*)
[L.S.]

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## SCHEDULE E.

*Form of Warrant of Commitment for non-payment of penalty or forfeiture and costs*

Province of }
County (*or* District) of }

To the Constable and Peace Officers of the County (*or* District) of and the Keeper of the Common Gaol of the said County (*or* District), at

Whereas C. D., of , was on the day of 18 , convicted before me, for that he, &c. (*as in conviction*), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c., (*as in conviction*); And whereas the said C. D. hath not paid the said penalty or forfeiture and costs: Therefore, I command you, the said Constables and Peace Officers, or any of you, to convey the said C. D. to the Common Gaol for the of , at and deliver him to the keeper thereof with this warrant; and I command you the said keeper of the said Gool, to receive the said C. D. into your custody, and keep him safely imprisoned in the said Gaol for the space of , and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this day of , 18 .

J. S.,
(*as in summons.*)
[L.S.

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# 38 VICTORIA.

## CHAP. 33.

### An Act to amend "The Fisheries Act."

[*Assented to 8th April*, 1875.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Subs. 1 of s. 7, of 31 V., c. 60, repealed.

1. The first sub-section of the seventh section of the Act passed in the thirty-first year of Her Majesty's reign, and known as "*The Fisheries Act*," is hereby repealed, and the following shall be substituted in lieu thereof, that is to say:

Close season for Salmon.

"7. Salmon shall not be fished for, caught, or killed, between the thirty-first day of July and the first day of May, in the Provinces of Ontario and Quebec, and in the River Restigouche; nor between the fifteenth day of August and the first day of March, in the Provinces of New Brunswick and Nova Scotia: Provided always, that it shall be lawful to fish for, catch and kill salmon with a rod and line, in the manner known as fly-surface fishing, between the thirtieth day of April and the thirty-first day of August, in the Provinces of Ontario and Quebec, and between the first day of February and the fifteenth day of September, in the Provinces of New Brunswick and Nova Scotia."

Proviso as to fly fishing.

Subs. 2 repealed.

2. The second sub-section of the said seventh section is hereby repealed; and the third and following sub-sections of the said seventh section shall be read as the second and following sub-sections of the said seventh section of the said Act.

Repeal of part of 31 V., c. 60, continuing Acts hereby repealed.

3. So much of the twenty-first section of the said Act as continues in force in the Province of Nova Scotia, the Revised Statute of Nova Scotia, "*Of River Fisheries*," and certain Acts of the Legislature of the Province of Nova Scotia amending the same, as in the next section mentioned, and all regulations adopted in pursuance of the said chapter of the said Revised Statutes, or of the said Acts amending the same, are hereby repealed.

4. The following Statutes of the Legislature of Nova Scotia are hereby repealed that is to say :— Acts of N. S. repealed.

Chapter ninety-five of the Revised Statutes of Nova Scotia, third Series "*Of River Fisheries.*"

The Act (twenty-eighth Victoria, chapter thirty-five) intituled "*An Act to amend Chapter ninety-five of the Revised Statutes 'Of River Fisheries.'*"

The Act (twenty-ninth Victioria, chapter thirty-six), intituled "*An Act to amend Chapter ninety-five of the Revised Statutes 'Of River Fisheries.'*"

But the repeal of these Acts shall not revive any Act or provision of law repealed by such Acts or any of them, or prevent the effect of any saving clauses therein, or affect any offence committed, penalty or liability incurred, right acquired, or act done before such repeal,—as to which the said Acts and any regulations made under them shall remain in force. Saving clause.

# 36 VICTORIA.

## CHAP. 65.

An Act for the better protection of Navigable Streams and Rivers.

[*Assented to* 23*rd May*, 1873.]

Preamble.

WHEREAS it is expedient to provide for the better protection of navigable streams and rivers; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

No sawdust, &c., to be thrown into navigable streams.

1. From and after the passing of this Act, no owner nor tenant of any saw-mill, nor any workman therein, nor other person or persons whosoever, shall throw or cause to be thrown, or suffer or permit to be thrown, any sawdust, edgings, slabs, bark or rubbish of any description whatsoever, into any navigable stream or river, either above or below the point at which such stream or river ceases to be navigable.

Penalty for contravening this Act.

2. Any person or persons violating the preceding section shall be liable, for the first offence, to a fine of not less than twenty dollars, and for the second and each subsequent offence to a fine of not less than fifty dollars,—which fine shall be recoverable summarily in the same manner as provided for the recovery of penalties by "*The Fisheries Act.*"

Fishery officers to enforce this Act.

3. It shall be the duty of the several fishery officers to examine and report on the condition of the navigable streams and rivers under this Act from time to time, and to prosecute all parties contravening the terms of this Act; and such officers shall, for enforcing the provisions of this Act, have and exercise all the powers conferred upon them for like purposes by "*The Fisheries Act.*"

Exemptions by proclamation in certain cases.

4. Provided always, that when it can be shown to the satisfaction of the Governor in Council that the public interest would not be injuriously affected thereby, the Governor in Council shall have power, from time to time, by Proclamation in the *Canada Gazette*, to declare any such stream or river, or part or parts thereof, exempted from the operation of this Act, in whole or in part, and shall also have power from time to time to revoke the same.

# 44 VICTORIA.

## CHAP. 28.

An Act to amend the Law respecting Documentary Evidence in certain cases.

[*Assented to* 21*st March*, 1881.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Modes in which *primâ facie* evidence of proclamations, &c., of Governor General, &c., may be given.

**1.** *Primâ facie* evidence of any proclamation, order, regulation or appointment, made or issued before or after the passing of this Act by the Governor General or by the Governor in Council, also of any proclamation, order or regulation or appointment made or issued before or after the passing of this Act, by or under the authority of any Minister or Head of any Department of the Government of Canada, may be given in all courts of justice established by the Parliament of Canada. and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority in all or any of the modes hereinafter mentioned, that is to say:—

Canada Gazette.

1. By production of a copy of the *Canada Gazette* purporting to contain a notice of such proclamation, order, regulation or appointment;

Copy printed by Q.P.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Queen's Printer for Canada;

Production of Order in Council, copy or extract certified.

3. By the production in the case of any proclamation, order or regulation issued by the Governor General or by the Governor in Council of a copy or extract purporting to be certified to be true by the Clerk, or assistant or acting Clerk of the Queen's Privy Council for Canada, and in the case of any proclamation, order, regulation or appointment made or issued by or under the authority of any such Minister or Head of a Department, by the production of a copy or extract purporting to be certified as true by the Minister, or by his Deputy or acting Deputy, or by the Secretary or acting Secretary of the Department over which he presides.

Modes in which *primâ facie* evidence of proclamations, &c, by Lieutenant-Governors of Provinces, &c., may be given.

**2.** *Primâ facie* evidence of any proclamation, order, regulation or appointment made or issued before or after the passing of this Act by a Lieutenant-Governor of any Province in Canada, or by his Executive Council, or by or under the authority of any member of such Executive Council, being the Head of any Department of the Provincial Government of the Province, may be given in all courts of justice established by the Parliament of Canada and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority in all or any of the modes hereinafter mentioned, that is to say:—

Official Gazette.

1. By the production of a copy of the Official Gazette for the Province purporting to contain a notice of such proclamation, order, regulation or appointment;

Copy of Government Printer.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Government Printer for the Province;

Certified copy, extract, &c.

3. By the production of a copy or extract of such proclamation, order, regulation or appointment certified to be true by the Clerk or assistant or acting Clerk of the Executive Council, or by the Head of any Department of a Provincial Government, or by his Deputy or acting Deputy, as the case may be.

Proof of hand writing, &c, not requisite.

**3.** No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation or appointment; and any such copy or extract may be in print or in writing, or partly in print and partly in writing.

Certain offences in relation to such proclamations, &c., to be felony; and punishment of offenders.

**4.** If any person—

False statement as to printing.

1. Prints any proclamation, order, regulation or appointment, or notice thereof, and causes the same falsely to purport to have been printed by the Queen's Printer or the Government Printer for any Province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; or—

Forging or tendering forged certificates, &c.

2. Forges, or tenders in evidence knowing the same to have been forged, any certificate authorized to be made or given by this Act or by any Act of Parliament, or by any Act of a Provincial Legislature, for the purpose of certifying or verifying any copy or extract of any proclamation, order,

regulation, appointment, paper, document or writing of which a certified copy may lawfully be offered as *primâ facie* evidence, he shall be guilty of a felony, and shall on conviction be liable to be imprisoned in the penitentiary for five years, or for any term not less than two years, or to be imprisonned in any other gaol or place of confinement for any term less than two years.

How this Act shall be construed.

**5**. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing Statute or existing at common law.

Short title.

**6**. This Act may be cited as "The Documentary evidence Act, Canada, 1881."

# PROCLAMATIONS.

DUFFERIN.

[L.S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the same may in anywise concern, GREETING:

## A PROCLAMATION.

EDWARD BLAKE, *Attorney General Canada.*

WHEREAS it is in and by the Act passed in the Session of the Parliament of Canada, held in the thirty-seventh year of Our Reign, intituled "An Act respecting the extension and application of "The Fisheries Act" to and in the Provinces of British Columbia, Prince Edward Island and Manitoba," amongst other things in effect enacted:

That the Act of the Parliament of Canada passed in the thirty-first year of Our Reign, and intituled "An Act for the Regulation of Fishing and protection of Fisheries" is extended to and shall apply to the Province of British Columbia and to the Province of Prince Edward Island, as if they had respectively formed part of the Dominion of Canada at the time of the passing of the said Act: Provided always, nevertheless, that the operation and enforcement of the said Act, in each of the said Provinces respectively, should be and was hereby suspended until the time to be appointed for its coming into operation and being enforced in such Province by Proclamation of the Governor General:—

NOW KNOW YE that We, under and by virtue of the authority vested in Us by the said first mentioned Act, and by and with the advice of Our Privy Council for Canada, do proclaim and declare that the said Act passed in the thirty-

first year of Our Reign and intituled " An Act for the Regulation of Fishing and protection of Fisheries " shall come into operation and be in force in the said Province of British Columbia upon, from and after the first day of July next ensuing the date hereof.

Of all which our loving subjects and all others to whom these presents may come, or whom the same may concern, are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Right Trusty and Well Beloved Cousin and Councillor the Right Honorable Sir FREDERIC TEMPLE, Earl of Dufferin, Viscount and Baron Clandeboye of Clandeboye, in the County Down, in the Peerage of the United Kingdom, Baron Dufferin and Clandeboye of Ballyleidy and Killeleagh, in the County Down, in the Peerage of Ireland, and a Baronet, Knight of Our Most Illustrious Order of Saint Patrick, and Knight Commander of Our Most Honorable Order of the Bath, Governor General of Canada, and Vice-Admiral of the same:

At Our Government House, in Our City of OTTAWA, this EIGHTH day of MAY, in the year of Our Lord, one thousand eight hundred and seventy-six, and in the Thirty-ninth year of Our Reign.

By Command,

R. W. SCOTT,
*Secretary of State*

LORNE

[L.S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the same may in anywise concern,—GREETING:

A PROCLAMATION.

GEO. W. BURBIDGE, *Deputy of the Minister of Justice, Canada.*

WHEREAS it is, in and by an Act passed in the session of the Parliament of Canada, held in the thirty-ninth year of Our Reign, chaptered twenty-one, and intituled "An Act respecting the North-West Territories, and to create a separate Territory out of part thereof," amongst other things in effect enacted, that it shall be lawful for the Governor in Council to extend and apply and declare applicable to the District of Keewatin (set apart as a separate district of the North-West Territories by the said Act) any Act or Acts of the Parliament of Canada;

AND WHEREAS it is in and by the Act passed in the session of the Parliament of Canada, held in the forty-third year of Our Reign, chaptered twenty-five, and called and known as "The North-West Territories Act, 1880," amongst other things in effect enacted, that the Governor in Council may, by Proclamation, from time to time, direct that any Acts of the Parliament of Canada shall be in force in the North-West Territories;

AND WHEREAS an Order of the Governor in Council was passed on the twelfth day of July, in the year of Our Lord, one thousand eight hundred and eighty-two, ordering and directing that a Proclamation be issued extending "The Fisheries Act" 31 Victoria, chapter 60 and "An Act for the better protection of Navigable Streams and Rivers," to the District of Keewatin, and to the North-West Territories:

NOW KNOW YE, that We do hereby and by virtue of the authority vested in Us by the said Acts and Order in Council respectively, proclaim and declare that the Act hereinbefore mentioned, passed in the session of the Parliament of Canada held in the thirty-first year of Our Reign, chaptered sixty, and called and known as 'The Fisheries Act," and the Act

passed in the thirty-sixth year of Our Reign, chaptered sixty-five. and intituled "An Act for the better protection of Navigable Streams and Rivers" are hereby extended to and shall hereafter apply to the said District of Keewatin and to the said North-West Territories.

Of all which Our loving subjects and all others whom these presents may concern, are hereby required to take notice and to govern themselves accordingly.

In Testimony Whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Well Beloved Councillor, Sir John Douglas Sutherland Campbell, (commonly called the Marquis of Lorne), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, Governor General of Canada and Vice Admiral of the same.

At Our Government House in Our CITY of OTTAWA, this TWELFTH day of JULY, in the year of Our Lord, one thousand eight hundred and-eighty two, and in the forty-sixth year of Our Reign.

By Command,

J. A. MOUSSEAU,
*Secretary of State.*

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OTTAWA: Printed by Brown Chamberlin, Law Printer to the Queen's Most Excellent Majesty.

W. O'G. HALY,
Lieutenant-General,
Administrator.

[L S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the same may in anywise concern,—GREETING:

A PROCLAMATION.

EDWARD BLAKE, *Attorney-General, Canada.* } WHEREAS it is in, and by an Act passed in the thirty-seventh year of Our Reign, and intituled "An Act respecting the extension and application of 'The Fisheries Act' to and in the Provinces of British Columbia, Prince Edward Island and Manitoba," amongst other things in effect enacted:

That the Act of the Parliament of Canada passed in the thirty-first year of Her Majesty's reign, and intituled "An Act for the Regulation of Fishing and protection of Fisheries" is hereby extended to and shall apply to the Province of British Columbia and to the Province of Prince Edward Island as if they had respectively formed part of the Dominion of Canada at the time of the passing of the said Act: Provided always, nevertheless, that the operation and enforcement of the said Act, in each of the said Provinces respectively, shall be and is hereby suspended until the time to be appointed for its coming into operation and being enforced in such Province by Proclamation of the Governor General;

And it is in and by the said Act further in effect enacted:

That upon, from and after the day to be appointed for the coming into operation in any one of the said Provinces, the said Act shall be in force, and apply in each Province, in like manner as it is in force and applies in all the other Provinces of Canada mentioned in the said Act and not solely to or in any one or more of them in particular;

And it is in and by the said Act further in effect enacted:

That upon, from and after the day appointed for the coming into operation and enforcement of the said Act in any one of the said Provinces, all Acts or Laws then in force in such Province inconsistent with the said Act or with any

regulation under it, and in force in such Province, or making any provision in any matter provided for by the said Act or by any such regulation shall be repealed ;

AND WHEREAS, Our Governor in Council deems it expedient that the said Act hereinbefore in part recited should come into operation and be enforced in the Province of Prince Edward Island at the date hereinafter mentioned :

NOW KNOW YE that We do by this Our Royal Proclamation, and by and with the advice of Our Privy Council for Canada, proclaim and declare that the Act of the Parliament of Canada passed in the thirty-first year of Her Majesty's reign and intituled " An Act for the Regulation of Fishing and protection of Fisheries " shall, upon, from and after this present seventh day of October instant, come into operation and be enforced in the Province of Prince Edward Island, and that the said seventh day of October instant is the time hereby appointed for the coming in operation and being enforced in the Province of Prince Edward Island of " An Act for the Regulation of Fishing and the protection of Fisheries" hereinbefore mentioned.

Of all which our loving subjects and all others to whom these presents may come, or whom the same may, in anywise, concern, are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Trusty and Well-Beloved Lieutenant General SIR WILLIAM O'GRADY HALY, Knight Commander of Our Most Honourable Order of the Bath, Administrator of the Government of Canada and Commander of Our Forces therein, &c., &c.

At Our Government House, in Our CITY of OTTAWA, this SEVENTH day of OCTOBER, in the year of Our Lord, One thousand eight hundred and seventy-five and in the Thirty-ninth year of Our Reign.

By Command,

R. W. SCOTT,
*Secretary of State.*

LORNE.

[L.S.]

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the same may in anywise concern,—GREETING:

A PROCLAMATION.

Z. A. LASH,
*Deputy of the Minister of Justice, Canada.*

WHEREAS it is, in and by an Act of the Parliament of Canada, passed in the thirty-seventh year of Our Reign, chapter 28, and intituled "An Act respecting the extension and application of 'The Fisheries Act' to and in the Provinces of British Columbia, Prince Edward Island and Manitoba," amongst other things in effect enacted:

That the operation and enforcement of the Act of the Parliament of Canada, passed in the thirty-first year of Our reign, and intituled "An Act for the Regulation of Fishing and Protection of Fisheries" shall, as respects the Province of Manitoba, be suspended until the time to be appointed for its coming into operation and being enforced in the said Province by Proclamation of the Governor General;

AND WHEREAS Our Governor in Council deems it expedient that the said hereinbefore in part recited Act should come into operation and be enforced in the Province of Manitoba at the date hereinafter mentioned,—

NOW KNOW YE that We do by this Our Proclamation, and by and with the advice of Our Privy Council for Canada, proclaim and declare that the Act of the Parliament of Canada, passed in the thirty-first year of Our reign, and intituled "An Act for the Regulation of Fishing and Protection of Fisheries" *shall* upon, from and *after the first day of October next*, 1879, *come into operation* and be enforced in the Province of *Manitoba*, in our Dominion of Canada, and that the said first day of October next, is the time hereby appointed for the coming into operation and being enforced in the Province of Manitoba of "An Act for the Regulation of Fishing and the Protection of Fisheries" hereinbefore mentioned.

Of all which Our loving subjects and all others to whom these presents may come, or whom the same may concern, are hereby required to take notice and to govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS, Our Right Trusty and Well-Beloved Councillor, SIR JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of Lorne), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, Governor General of Canada and Vice-Admiral of the same.

At Our Government House, in Our CITY of OTTAWA, this FIFTEENTH day of SEPTEMBER, in the year of Our Lord, One thousand eight hundred and seventy-nine, and in the Forty-third year of Our Reign.

By Command,

J. C. AIKINS,
*Secretary of State.*

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OTTAWA: Printed by B. CHAMBERLIN, Law Printer to the Queen's Most Excellent Majesty.

# CHAPTER 95.

An Act respecting Fisheries and Fishing. A.D. 1886.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

Short title. **1.** This Act may be cited as "*The Fisheries Act.*" 31 V., c. 60, s. 24.

FISHERY OFFICERS.

Fishery officers may be appointed. **2.** The Governor in Council may appoint fishery officers, whose powers and duties shall be as defined by this Act and the regulations made under it, and by instructions from the Department of Fisheries; and every such officer, if he is authorized by the Governor in Council to exercise the powers of a justice of the peace, shall for all the purposes of this Act and the regulations made under it, be *ex-officio* a justice of the peace, within the district for which he is appointed to act as such fishery officer. 31 V., c. 60, s. 1, *part.*

Powers and duties.

Oath of office. **3.** Every fishery officer shall take and subscribe an oath in the form following, that is to say:—

Form. "I, A. B., a fishery officer in and for the district described in my appointment, do solemnly swear, that to the best of my judgment, I will faithfully, honestly and impartially fulfil, execute and perform the office and duty of such officer according to the true intent and meaning of "*The Fisheries Act*" and regulations, and in accordance with my instructions. So help me God." 31 V., c. 60, s. 1, *part.*

FISHERY LEASES AND LICENSES.

Fishery leases and licenses. **4.** The Minister of Marine and Fisheries may, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued fishery leases and licenses for fisheries and fishing wheresoever situated or carried on; but leases or licenses for any term exceeding nine years shall be issued only under authority of the Governor in Council. 31 V., c. 60, s. 2.

If for more than nine years.

COD FISHERY.

Nets for taking cod. **5.** No one shall use mackerel, herring or caplin seines for taking codfish, and no codfish seine shall be of a less

sized mesh than four inches in extension in the arms, and three inches in the bunt or bottom of the seine. 31 V., c. 60, s. 4.

WHALE, SEAL AND PORPOISE FISHERY.

Seals, &c., not to be killed by rockets or shells.

Penalty.

**6.** Every one who hunts or kills whales, seals or porpoises by means of rockets, explosive instruments or shells, shall be liable to a penalty not exceeding three hundred dollars, and in default of payment to imprisonment for a term not exceeding six months. 31 V., c. 60, s. 5.

Sedentary fisheries not to be disturbed.

Penalty.

**7.** Every one who, with boat or vessel, during the time of fishing for seals, knowingly or wilfully disturbs, impedes or injures any sedentary seal fishery, or prevents, hinders or frightens the shoals of seals coming into such fishery, shall, for each offence, be liable to a penalty not exceeding sixty dollars and, in default of payment, to imprisonment for a term not exceeding one month; and shall also be liable to pay such damages as are assessed by the fishery officer or justice of the peace before whom the person injured complains:

Disputes as to seal fisheries, how settled.

2. Disputes between occupiers of seal fisheries concerning limits and the mode of fishing or setting nets, shall be decided summarily by any fishery officer or justice of the peace, by whom arbitrators may be appointed to assess damages; and any damages assessed or which arise out of a repetition or continuance of the difficulty ordered to be remedied, may be levied under the warrant of any fishery officer or justice of the peace. 31 V., c. 60, s. 6.

SALMON FISHERY.

Close season for salmon.

Proviso: as to fly-fishing.

**8.** Salmon shall not be fished for, caught or killed, between the thirty-first day of July and the first day of May, in the Provinces of Ontario and Quebec, and in the river Restigouche; or between the fifteenth day of August and the first day of March, in the Provinces of New Brunswick and Nova Scotia; or between the first day of September and the thirty-first day of December, in the Province of Prince Edward Island: Provided always, that it shall be lawful to fish for, catch and kill salmon with a rod and line, in the manner known as fly-surface-fishing, between the thirtieth day of April and the thirty-first day of August, in the Provinces of Ontario and Quebec, and between the first day of February and the fifteenth day of September, in the Provinces of New Brunswick and Nova Scotia:

Foul salmon.

2. Foul or unclean salmon shall not be, at any time, caught or killed:

Fry, parr and smolt not to be killed.

3. Salmon fry, parr and smolt shall not, at any time, be fished for, caught or killed, and no salmon or grilse of less weight than three pounds shall be caught or killed; but if caught by accident in nets lawfully used for other fish, they shall be liberated alive, at the cost and risk of the owner of

the fishery, on whom, in every case, the proof of such actual liberation shall devolve:

Size of meshes of salmon nets.

4. Meshes of nets used for capturing salmon shall be at least five inches in extension, and nothing shall be done to practically diminish their size:

Use of nets regulated.

5. The use of nets or other apparatus for the capture of salmon shall, except in the Provinces of Nova Scotia and New Brunswick, be confined to tidal waters, and any fishery officer may determine the length and place of each net or other apparatus used in any of the waters of Canada; but nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of the Province of Ontario, or preclude the Minister of Marine and Fisheries from authorizing, by special fishery licenses or leases, the capture of salmon by nets in fresh water streams: Provided, that no one shall fish for or catch salmon with swing nets in any of the waters of Canada:

Proviso: as to Ontario, &c.

Proviso: as to swing nets.

Boundaries of estuary fishing may be defined.

6. The Minister, or any fishery officer authorized to such effect, shall have power to define the tidal boundary of estuary fishing for the purposes of this Act; and every one who, without the special fishery lease or license above provided for, fishes for salmon above the actual limit so laid down, except with a rod and line, in the manner known as fly-surface-fishing, shall be liable to a penalty not exceeding one hundred dollars, and in default of payment to imprisonment for a term not exceeding two months:

Penalty for fishing above limits, except with a rod and line, &c.

Distance of nets apart, &c

7. All nets, or other lawful appliances for the capture of salmon, shall be placed at distances of not less than two hundred and fifty yards apart, without intermediate fishing materials of any kind being set or used in and about any other part of the stream:

No one to drift for salmon. Exception.

8. No one shall drift for salmon, except in British Columbia, where drifting with salmon nets shall be confined to tidal waters; but drift nets for salmon in the said Province shall not be so set or used as to obstruct more than one-third of the width of any river:

Further distance between nets may be prescribed.

9. Any fishery officer may direct, either in writing or orally on sight, that a greater space than two hundred and fifty yards shall be left between salmon nets, or other fishing apparatus, and may prescribe their dimensions and extension: but gill or float nets shall not be used to lengthen, extend or enlarge any other kind of fishery:

Proviso.

As to spawning rivers.

10. No salmon shall be captured within two hundred yards of the mouth of any tributary, creek or stream which salmon frequent to spawn:

Mode of killing at certain places.

11. Except in the manner known as fly-surface-fishing with a rod and line, salmon shall not be fished for, caught or killed at any artificial pass or salmon leap, or in any pool where salmon spawn:

Salmon spawn.

12. Except under the authority and for the special purpose provided for in this Act, no one shall take, buy, sell,

destroy, use or possess any salmon roe, or injure any spawning bed. 31 V., c. 60, s. 7;—38 V., c. 33, s. 1.

TROUT AND WHITEFISH FISHERY.

As to trout.

**9.** The following provisions shall be observed with respect to trout, that is to say:—

In Ontario.

(*a.*) In the Province of Ontario, no person shall fish for, catch, kill, buy, sell or have in his possession any speckled trout, "*salmo fontinalis*," between the fifteenth day of September and the first day of May, or any salmon trout between the first and tenth days of November, both days inclusive, in each year; or any lake trout between the fifteenth day of October and the first day of December, or any brook or river trout between the fifteenth day of September and the first day of January in each year;

In Quebec.

(*b.*) In the Province of Quebec, no person shall fish for, catch, kill, buy, sell or have in his possession any salmon trout, lake trout or lunge, between the fifteenth day of October and the first day of December, or any speckled trout, between the first day of October and the thirty-first day of December, or any brook or river trout, between the fifteenth day of September and the first day of January in each year;

In Prince Edward Island.

(*c.*) In the Province of Prince Edward Island, no person shall fish for, catch, kill, buy, sell or have in his possession any trout between the first day of October and the first day of December in each year, and they shall not, at any time, be fished for or taken by spears, sweep nets or seines in any river, stream or pond;

In other parts of Canada.

(*d.*) In all other parts of Canada no person shall fish for, catch, kill, buy, sell or have in his possession any kind of trout or lunge in any way whatever, between the first day of October and the first day of January:

In inland waters.

2. No one shall, at any time, fish for, catch or kill trout by other means than angling by hand with hook and line, in any inland lake, river or stream, except in tidal waters:

Exception as to Indians.

3. In the Province of Manitoba and the North-West Territories, Indians may, at any time, catch or kill speckled trout for their own use only, and not for purposes of sale or traffic:

Exception as to fish used for bait, &c.

4. Nothing in this section shall prevent the use of small sized trout for the purpose of baiting traps, or affect the taking and using the same by fishermen as bait for cod fishing in tidal waters, or subject fishermen to penalty if by accident in fishing for herrings or whitefish by means of nets, trout are inclosed or taken. 31 V., c. 60, s. 8.

Close season for whitefish.

**10.** No one shall fish for, catch, kill, buy, sell or have in his possession, whitefish—

In Ontario.

(*a.*) In the Province of Ontario, between the first and tenth days of November, both days inclusive, in each year,

or by means of any kind of seine, between the thirteenth day of May and the first day of August;

(*b.*) In the Province of Quebec, between the tenth day of November and the first day of December in each year, or by means of any kind of seine between the thirty-first day of July and the first day of December; In Quebec.

(*c.*) In the Province of Manitoba and the North-West Territories, between the twentieth day of October and the first day of November, in each year: Provided that Indians may there catch or kill the same for their own use only, but not for purposes of sale or traffic, and provided that whitefish shall not be taken or used, bought, sold or possessed for making oil or feeding domestic animals; In Manitoba and N.-W.T.

(*d.*) In any other part of Canada, between the nineteenth day of November and the first day of December in each year: In other parts of Canada

2. The fry of whitefish shall not be, at any time, destroyed: Fry not to be destroyed.

3. Gill nets for catching salmon trout or whitefish shall have meshes of at least five inches extension measure; and gill nets shall not be set within two miles of any seining ground: Gill nets.

4. Seines for catching whitefish shall have meshes of not less than four inches extension measure. 31 V., c. 60, s. 9. Seines.

OTHER FISHERIES.

**11.** Close seasons for bass, pike, pickerel (*doré*), maskinongé and other fish, may be fixed by the Governor in Council to suit different localities. 31 V., c. 60, s. 10. Close season for bass, &c.

POSSESSION OF FISH.

**12.** No one shall, without lawful excuse, (the proof whereof shall lie on him), buy, sell or possess any fish, or portion of any fish named in this Act, caught or killed at a time or in a manner prohibited by law: Prohibition to buy, sell, or have in close season.

2. Every customs officer, excise officer, police officer or constable, clerk of a market or other person in charge of any market-place in any village, town or city, shall seize and, upon view, confiscate to his own proper use, any fish mentioned in this Act, caught or killed during prohibited seasons, or which appears to have been killed by unlawful means; but every such seizure and appropriation, with the date, place and circumstances thereof, shall be duly reported, together with the name, residence and calling of the person in whose possession such fish was found, to the fishery officer who has jurisdiction over the district within which such seizure, confiscation and appropriation took place. 31 V., c. 60, s. 11. Certain officers to seize fish exposed for sale in close season. And report the same.

CONSTRUCTION OF FISH-WAYS.

**13.** Every dam, slide, or other obstruction across or in any stream where the Minister of Marine and Fisheries deter- Fish-ways to be made where and in

such manner as fishery officer directs.

mines it to be necessary for the public interest that a fish-pass should exist, shall be provided by the owner or occupier with a durable and efficient fish-way, which shall be maintained in practical and effective condition, in whatever place and of whatever form and capacity will admit of the passage of fish through the same; and the place, form and capacity of the fish-way may be prescribed by any fishery officer by notice in writing:

Penalty for violation.

2. Every one who violates the foregoing provisions of this section shall incur a penalty of four dollars for each day during which any such obstruction remains unprovided with a fish-way, after three days' notice in writing to the owner or occupier thereof:

To be kept open, &c.

3 Fish-ways shall be kept open and unobstructed and shall be supplied with a sufficient quantity of water to fulfil the purposes of this enactment, during such times as are required by any fishery officer:

Minister may pay one half the cost.

4. The Minister may authorize the payment of one-half of the expense incurred by such owner or occupier in constructing and maintaining any fish-way:

May construct and recover the cost in certain cases.

5. The Minister, in order to procure the construction of any fish-way, pending proceedings against any owner or occupier for the penalty imposed by this Act, may give directions to make and complete the same forthwith, and may authorize any person to enter upon the premises with the necessary workmen, means and materials, and may recover from the owner or occupier the whole expense so incurred by action before any competent tribunal:

Not to be obstructed or injured.

6. No person shall injure or obstruct any fish-way, or do anything to deter or hinder fish from entering and ascending or descending the same, or injure or obstruct any authorized barrier. 31 V., c. 60, s. 12.

GENERAL PROHIBITIONS.

Penalty for fishing in limits leased to another.

**14.** Every one who fishes for, takes, catches or kills fish in any water, or along any beach, or within any fishery limits described in any lease or license, or places, uses, draws or sets therein any fishing gear or apparatus, except by permission of the occupant under such lease or license for the time being, or disturbs or injures any fishery, shall be liable to a penalty not exceeding one hundred dollars and costs, or to imprisonment for a term not exceeding two months; and the fishing apparatus so used, and all fish taken or caught, shall be forfeited, and any fishery officer or the holder of any such lease or license may, on view, forthwith seize and remove any net or apparatus so used, to be dealt with according to law:

Apparatus, &c., may be seized.

Proviso: as to taking bait or angling.

Provided always, that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing shall not interfere with the taking of bait used for codfishing, or prevent angling for other purposes than those of trade and commerce:

2. Seines, nets or other fishing apparatus shall not be set in such a manner or in such places as to obstruct the navigation with boats and vessels, and no boats or vessels shall be permitted to destroy or wantonly injure in any way any seines, nets or other fishing apparatus lawfully set: Navigation not to be obstructed.

3. Every person using stakes or other timber placed for fishing purposes in any water shall remove the same within forty-eight hours after ceasing to use them, and in all cases at the expiry of the fishing season: Stakes to be removed.

4. The main channel or course of any stream shall not be obstructed by any nets or other fishing apparatus; and one-third of the course of any river or stream, and not less than two-thirds of the main channel at low tide, in every tidal stream, shall be always left open, and no kind of fishing apparatus or material shall be used or placed therein: Provided that the use of weirs for catching eels exclusively, and the use of mill-dams for catching eels, shall be prevented only in cases where, and at times when they injure other fisheries or, by completely barring any passage, they deprive other weirs of a share in the run of eels: and such place, time and circumstances may be determined by any fishery officer: Main channels not to be obstructed. Proviso: as to eel fishing.

5. No net or other device shall be so used as entirely to obstruct the passage of fish to or from any of the waters of Canada, by any of the ordinary channels connecting such waters, or prevent their passage to and from accustomed resorts for spawning and increasing their species: No net, &c., to obstruct entirely the passage of fish.

6. No one shall catch, kill or molest fish when passing or attempting to pass through any fish-way, or fish-pass, or in surmounting any obstacle or leap,—or shall use any invention to catch, kill or molest fish in the mill-dams, fish-ways, mill-heads and water courses appurtenant thereto: Killing fish at certain places forbidden.

7. No one shall use a bag-net, trap-net or fish-pound, except under a special license, granted for capturing deep-sea fish other than salmon: Certain nets forbidden.

8. No one shall fish for, catch or kill salmon, trout or lunge of any kind, maskinongé, winaniche, bass, barfish, pickerel, whitefish, herring, or shad, by means of spear, grapnel hooks, negog, or nishagans: Provided, that the Minister of Marine and Fisheries may appropriate and license or lease certain waters in which certain Indians shall be allowed to catch fish for their own use in the manner and at the time specified in the license or lease, and may permit spearing in certain localities: Fish not to be killed in certain ways. Proviso: as to Indians.

9. No one shall fish for, catch, kill, buy, sell or possess the young of any of the fish mentioned in this Act, or in any regulation under it: Young of fish not to be taken.

10. Seines for barfish shall have meshes of not less than three inches, extension measure: Seines for barfish.

11. Fishery officers may determine or prescribe the distance between each and every fishery (*pècherie*), and shall forthwith remove any fishery which the owner neglects or refuses to remove; and such owner shall be moreover liable Distance between fisheries.

for a violation of this Act, and for the cost and damages of removing such fishery:

Fascine fisheries with box-traps.

12. Every fascine fishery with a box-trap (*coffre*), instead of pound, shall have across the outside end of such box-trap a wire covering or a net work, the meshes of which shall be at least one inch square; but this shall not apply to eel weirs during autumn:

Nets, &c., in small rivers.

13. Nets or other fishing apparatus shall not be so used as to impede or divert the course of fish in any small river:

Fish to be allowed free passage on Sunday.

14. From the time of low water nearest six of the clock in the afternoon of every Saturday, to the time of low water nearest six of the clock in the forenoon of every Monday, in tidal waters, and from six of the clock in the afternoon of every Saturday to six of the clock in the forenoon of the following Monday in non-tidal waters—seines, nets or other apparatus used for catching fish shall be so raised or adapted as to admit of the free passage of fish through, by or out of the same, for the purpose of affording a free passage from six of the clock on every Saturday afternoon to six of the clock on every following Monday forenoon, and during such close time no one shall catch fish by such means; and any fish so taken, caught or killed, together with the nets or other apparatus used, shall be forfeited: Provided always, that this subsection shall, as affects the deep-sea and coast fisheries in tidal waters, apply only to salmon, and the salmon fishery with nets and other apparatus, within a distance of three miles on either side of the mouth of any river or harbor frequented by salmon. 31 V., c. 60, s. 13.

And forfeited if then taken.

Proviso: as to certain fisheries in tidal waters.

INJURIES TO FISHING GROUNDS AND POLLUTION OF RIVERS.

Penalty for throwing overboard certain substances prejudicial to fisheries.

**15.** Every one who throws overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbor or roadstead, or any water where fishing is carried on, or throws overboard or lets fall upon any fishing bank or ground, or leaves or deposits or causes to be thrown, left or deposited, upon the shore, beach or bank of any water, or upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any salmon river, remains or offal of fish, or of marine animals, or leaves decayed or decaying fish in any net or other fishing apparatus, shall be liable, for each offence, to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding two months; and every one so offending, whether master or servant, and the master or owner of any vessel or boat from which such ballast or offal, or other prejudicial substance is thrown, shall be liable for each such offence: Provided always, that such remains or offal may be buried ashore, beyond high water mark, and that at establishments situated inside of the mouths of rivers for carrying on deep-sea fisheries, the same may be dropped into perforated boxes or inclosures built upon the beach, or under

Proviso: as to the disposal of offal.

stage-heads, in such manner as to prevent the same from being floated or drifted into the streams, or may be disposed of in such other manner as any fishery officer prescribes:

Poisonous substances.

2. Lime, chemical substances or drugs, poisonous matter, dead or decaying fish, or any other deleterious substance, shall not be thrown into, or allowed to pass into, or be left or remain in any water frequented by any of the kinds of fish mentioned in this Act; and every one who throws or allows to drift into any stream frequented by fish, saw dust or mill rubbish, shall incur a penalty not exceeding one hundred dollars: Provided always, that the Minister of Marine and Fisheries may exempt from the operation of this sub-section, wholly or partially, any stream or streams in respect to which he considers that its enforcement is not requisite in the public interest. 31 V., c. 60, s. 14.

Mill rubbish. Saw dust

Proviso: Minister may exempt any stream, &c.

FISHERY REGULATIONS.

Governor in Council may make fishery regulations.

**16.** The Governor in Council may, from time to time, make regulations for the better management and regulation of the sea-coast and inland fisheries,—to prevent or remedy the obstruction and pollution of streams,—to regulate and prevent fishing, to prohibit the destruction of fish, and to forbid fishing except under authority of leases or licenses,—which regulations shall have the same force and effect as if herein enacted, notwithstanding that such regulations extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing or the times specified as prohibited or close seasons, and may fix such other modes, times or places as are deemed by the Governor in Council adapted to different localities, or otherwise expedient:

And may thereby vary certain provisions of this Act.

Publication of regulations.

2. Such regulations shall take effect from the date of the publication thereof in the *Canada Gazette:*

Offences against regulations.

3. Every offence against any regulation made under this Act may be stated as in violation of this Act. 31 V., c. 60, s. 19.

POWERS OF FISHERY OFFICERS AND OTHER JUSTICES.

Fishery officer may convict on view.

**17.** Any fishery officer or other justice of the peace may, on view, convict of any of the offences punishable under the provisions of this Act, and may remove instantly and detain any materials unlawfully in use:

Search may be made.

2. Any fishery officer or other justice of the peace may search, or grant a warrant to search, any vessel or place where there is reason to believe that any fish taken in violation of this Act, or anything used in violation thereof, is concealed:

In what locality offence shall be prosecuted.

3. If any offence under this Act is committed in, upon or near any waters forming the boundary between different counties or districts, or fishery districts, such offence may be prosecuted before any justice of the peace in either of such counties or districts, or before the fishery officer for either fishery district:

Right of fishery officer to pass over lands.

4. In the discharge of his duties any fishery officer, or other person or persons accompanying him or authorized to such effect, may enter upon and pass through or over private property without being liable for trespass:

Disputes as to boundaries.

5. Disputes between persons relative to fishing limits or claims to fishery stations, or relative to the position and use of nets and other fishing apparatus, shall be settled by the local fishery officer:

Gurry grounds.

6. Gurry grounds may be designated or defined by any fishery officer:

Certain officers to have powers of a justice of the peace under this Act.

7. Any fishery officer, stipendiary magistrate, or commissioned officer of Her Majesty's navy, on board of any vessel belonging to or chartered by the Government of Canada, employed in the service of protecting fisheries, and every commissioned officer of Her Majesty's navy serving on board of any vessel cruising and being in the waters, harbors or ports of Canada, shall, for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, and of enforcing any laws relating to such fisheries, exercise the powers of a justice of the peace, without property qualification and without taking any oath of office, in all the waters, harbors or ports, and on all the coasts of Canada where, for the time being and for the purposes above described, they are so engaged:

Property seized, how dealt with.

8. Property seized by any fishery officer, stipendiary magistrate or naval officer, acting as aforesaid, may be removed for disposal to the nearest or most convenient port where any revenue officer or other public officer empowered to deal with the matter resides:

Powers of officer, &c., as to detention of prisoners.

9. Whenever it is impracticable for any fishery officer, stipendiary magistrate or naval officer, acting in such capacity, to cause any prisoner to be conveyed to, and committed to the nearest common gaol, he may detain him on board of the vessel, or transfer him to another vessel for conveyance to and delivery at the most convenient place, and with all convenient dispatch, where he can be duly committed into the custody of the sheriff or other officer of the county or district in which the common gaol is situated to which he is ordered to be committed; and until such prisoner is so delivered into the immediate custody of any sheriff or gaoler the fishery officer, stipendiary magistrate or naval officer having him in charge, shall have, in all places through which it is necessary to convey such prisoner, the same authority and power in regard to such prisoner, and to command the aid of any of Her Majesty's subjects in preventing his escape, or in retaking him in case of escape, as any county or district sheriff or peace officer has while lawfully conveying a prisoner from one part of his own district to another:

Conveyance of prisoners.

Where the offence shall be held to have been committed.

10. Every such offence shall be deemed to have been committed in the county or district to the common gaol of which the commitment has been actually made. 31 V., c. 60, s. 18.

PENALTIES AND FORFEITURES.

Penalty in cases where no other is provided.

**18.** Except as herein otherwise provided, every one who violates any provision of this Act, or of the regulations under it, shall be liable to a penalty not exceeding twenty dollars and costs, and in default of payment, to imprisonment for a term not exceeding one month and not less than eight days; and any fishery officer or justice of the peace may grant a warrant of distress for the amount of such penalty and costs: but whenever it appears to the satisfaction of the justice of the peace or fishery officer that the offence was committed in ignorance of the law, or that because of the poverty of the defendant the penalties imposed would be oppressive, a discretionary power may be exercised:

Distress for penalty, &c.

2. If any defendant has goods and chattels whereon the costs may be levied, the complainant may distrain for the amount under warrant by any fishery officer or other justice of the peace, notwithstanding the imprisonment of the person convicted:

Forfeiture of articles used in violation of this Act.

3. All materials, implements or appliances used, and all fish caught, taken or killed in violation of this Act or any regulation under it, shall be confiscated to Her Majesty, and may be seized and confiscated, on view, by any fishery officer, or taken and removed by any person for delivery to any justice of the peace; and the proceeds arising from the disposal thereof may be applied towards defraying expenses under this Act:

Application of pecuniary penalties.

4. A moiety of every penalty levied by virtue of this Act shall belong to Her Majesty, and the other moiety shall be paid to the prosecutor, not being a fishery officer, together with costs taxed to him in respect thereof; but if a fishery officer is the informer, the whole shall belong to Her Majesty:

Crown's share.

5. Her Majesty's share of each penalty and all proceeds derived from the sale of confiscated articles under this Act, shall be paid to the Minister of Finance and Receiver General through the Department of Fisheries, and be applied towards the expenses incurred for the protection of the fisheries:

Appeal to Minister.

6. Persons aggrieved by any such conviction may appeal by petition to the Minister of Marine and Fisheries, who may remit penalties and restore forfeitures under this Act. 31 V., c. 60, s. 16, *part.*

MODE OF RECOVERY.

Before whom to be sued for

**19.** Every penalty or forfeiture imposed by this Act, or regulations made under it, may be recovered or enforced on parol complaint, before any fishery officer, stipendiary magistrate or justice of the peace, in a summary manner, on the oath of one credible witness:

Service of summons, &c.

2. Three days shall elapse between the service and the return day of the summons to any defendant served within fifteen miles, and one day more for each additional fifteen

miles of the distance between the place at which the summons is issued and the place of service: Provided, that if it is expedient to proceed against a defendant without delay, any fishery officer or justice of the peace may issue a summons, returnable immediately, to compel the defendant to appear before him forthwith, or may issue a warrant for the apprehension of such defendant simultaneously with the summons:

Proviso: for cases not admitting of delay.

Limitation of suits.

3. Penalties incurred under this Act, or the regulations made under it, shall be sued for within two years from the commission of the offence:

Who shall be liable.

4. When not otherwise specified, every proprietor, owner, agent, tenant, occupier, partner or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for any penalties or moneys recoverable under any of the provisions of this Act or of any regulation made under it:

No quashing for want of form &c.

5. No proceeding or conviction under this Act or under any regulation made under it shall be set aside or quashed for irregularity or defect in form, and no warrant of arrest or commitment shall be held void by reason of any defect therein, if it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. 31 V., c. 60, s. 17.

FORMS OF PROCEDURE.

Forms of proceedings under this Act.

**20.** The forms in the schedule to this Act may be used when applicable; and the "*Act respecting summary proceedings before Justices of the Peace*" shall apply to proceedings under this Act. 31 V., c. 60, s. 23.

GENERAL PROVISIONS.

Waters may be set apart for the propagation of fish.

Penalty for trespass.

**21.** The Minister of Marine and Fisheries may authorize to be set apart, and to be leased, any river or other water for the natural or artificial propagation of fish; and every person who wilfully destroys or injures any place set apart or used for the propagation of fish, or who fishes therein without written permission from a fishery officer, or from the holder thereof under lease or license, or uses therein any fishing light or other implement for fishing, during the period for which such waters are so set apart, shall be liable to a penalty not exceeding two hundred dollars, and in default of payment, to imprisonment for a term not exceeding four months:

Licenses to take spawn, &c.

2. Nothing contained in this Act shall preclude the granting by the Minister of written permission to obtain fish and fish spawn for purposes of stocking or artificial breeding, or for scientific purposes:

Fishery lessees in arrears, &c.

3. Lessees or licensees of fisheries shall have no claim to renewal of leases or licenses if in arrears of rent or percentage during four months after the same is due, and any lessee

or licensee convicted of a violation of this Act, or any regulation under it, shall be liable to forfeit his lease or license:

Special licenses for oyster beds

4. Special licenses and leases for any term of years may be granted to any person who wishes to plant or form oyster beds in any of the bays, inlets, harbors, creeks or rivers, or between any of the islands on the coast of Canada; and the holder of any such lease or license shall have the exclusive right to the oysters produced or found on the beds within the limits of such lease or license:

Minister may expend parliamentary grant for making or re-stocking oyster beds.

5. The Minister may authorize to be expended annually any sum appropriated by Parliament for the formation of oyster beds in various waters and places found adapted for that purpose, and for transplanting oysters and re-stocking exhausted fisheries by natural or artificial means, and for improving streams where natural obstructions exist, and may authorize the construction, erection or placing of any artificial barrier or grating in any stream or river, or in any watercourse, and in the channels or beds thereof:

Protection of oyster beds.

Penalty for injuring them.

6. Every one who takes oysters from the oyster beds, or in any way injures or disturbs such oyster beds, except during the times and on the terms permitted by regulation under this Act, shall be liable to a penalty not exceeding one hundred dollars and not less than forty dollars, and in default of payment, to imprisonment for a term not exceeding two months and not less than one month; and the vessel and all apparatus used in the taking of such oysters, or the injury or disturbance of such oyster beds, shall be forfeited:

Shell-fish fisheries.

7. Shell-fish fisheries shall be subject to the provisions of this Act, and any regulations made under it. 31 V., c. 60, s. 15.

As to right to use vacant public property for fishing purposes and as to taking bait, &c.

**22.** Every subject of Her Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation, for the purposes of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it has been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner; and all subjects of Her Majesty may take bait or fish in any of the harbors or roadsteads, creeks or rivers, subject to the provisions of this Act respecting the leasing or licensing of fisheries and fishing stations; but no property leased or licensed shall be deemed vacant. 31 V., c. 60, s. 3.

Proviso.

## SCHEDULE.

*Form of Complaint.*

Province of
County (*or* District) of

This day of , 18 .

To J. S., a Justice of the Peace for the said County (*or* District).

A. B., of , complains that C. D., of , hath (*state the offence briefly in any intelligible terms, with the time and place at which it was committed*), in contravention of "*The Fisheries Act;*" Wherefore the complainant prays that judgment may be given against the said C. D., as by the said Act provided.

(*Signature*) A. B.

---

*Summons to Defendant.*

Province of
County (*or* District) of

To C. D., of , &c.

Whereas complaint has (*this day*) been made before me that you (*state the offence in the words of the complaint, or to the like effect*) in contravention of "*The Fisheries Act*": Therefore you are hereby commanded to come before me, at on the day of , at o'clock in the , to answer the said complaint and to be dealt with according to law.

Witness my hand and seal, this day of , 18 .

Justice of the Peace for

[L. S.]

---

*Subpœna to a Witness.*

Province of
County (*or* District) of

To E. F., of &c.

Whereas complaint has been made before me that C. D. did (*state the offence as in the summons*), and I am informed that you can give material evidence in the case: Therefore you are commanded to appear before me, at , on the day of , at o'clock in the , to testify what you know concerning the matter of the said complaint.

Witness my hand and seal, this day of , 18 .

J. S.,
(*as in summons.*)
[L. S.]

---

*Form of Conviction.*

Province of
County (*or* District) of

Be it remembered, that on this day of 18 , at in the said County (*or* District), C. D., of , is convicted before me, for that he did, &c. (*stating the offence briefly, and the time and place where committed*), in contravention of "*The Fisheries Act*"; and I adjudge the said C. D. to forfeit (and pay) the sum of (*or mention the thing forfeited under this Act*), to be applied according to law, and also to pay to A. B. (*the complainant*) the sum of for costs:

(*If the penalty be not forthwith paid, add*), and the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the Common Gaol of the County *or* District) of for the period of .

Witness my hand and seal, this day of , 18 .

J. S.,
(*as in summons.*)
[L.S.]

---

*Form of Warrant of Commitment for non-payment of penalty or forfeiture and costs.*

Province of
County (*or* District of)

To the Constable and Peace Officers of the County (*or* District) of and the Keeper of the Common Gaol of the said County *or* District), at .

Whereas C. D., of , was on the day of , 18 , convicted before me, for that he, &c. (*as*



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*in conviction*), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c. (*as in conviction*); And whereas the said C. D. hath not paid the said penalty or forfeiture and costs: Therefore, I command you, the said Constables and Peace Officers, or any of you, to convey the said C. D. to the Common Gaol for the of , at and deliver him to the keeper thereof with this warrant; and I command you the said keeper of the said gaol to receive the said C. D. into your custody, and keep him safely imprisoned in the said gaol for the space of , and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this day of , 18 .

J. S.,
(*as in summons.*)
[L.S.]

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OTTAWA: Printed by BROWN CHAMBERLIN, Law Printer to the Queen's Most Excellent Majesty.

# 31 VICTORIA.

## CHAP. 61.

An Act respecting Fishing by Foreign Vessels.

[*Assented to 22nd May*, 1868.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Governor may grant licenses to foreign vessels, &c., to fish in British waters, within three miles of the coasts of Canada.

**1.** The Governor may, from time to time, grant to any foreign ship, vessel or boat, or to any ship, vessel or boat not navigated according to the laws of the United Kingdom, or of Canada, at such rate, and for such period not exceeding one year, as he may deem expedient, a license to fish for or take, dry or cure any fish of any kind whatever, in British waters, within three marine miles of any of the coasts, bays, creeks or harbours whatever, of Canada, not included within the limits specified and described in the first article of the convention between His late Majesty King George the Third and the United States of America, made and signed at London on the twentieth day of October, 1818.

Certain British and Canadian officers may board vessels hovering in British waters within the said limits.

**2.** Any commissioned officer of Her Majesty's Navy serving on board of any vessel of Her Majesty's Navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's Subjects engaged in the fisheries, or any commissioned officer of Her Majesty's Navy, Fishery officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat within any harbour in Canada or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours in Canada, and stay on board so long as she may remain within such place or distance.

Such vessels refusing to depart may be brought into port, &c.

**3.** If such ship, vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the Master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel or boat into port and search her cargo, and may also examine the Master upon oath touching the cargo and voyage; and if the Master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel or boat under the first section of this Act, such ship, vessel or boat and the tackle, rigging apparel, furniture, stores and cargo thereof shall be forfeited.

And forfeited in certain cases.

Vessels, &c., forfeited may be seized.

**4.** All goods, ships, vessels and boats and the tackle rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

Penalty for resisting seizure.

How such vessels, &c., shall be secured and kept.

**5.** Goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of the Collector or other principal officer of the Customs at the port nearest to the place where seized, to be secured and kept as other goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the Province in which such port is situate, to be secured and kept, or into such other custody and keeping as the Governor in Council, or a court of Vice-Admiralty shall order.

When condemned to be sold by auction.

**6.** All goods, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo, condemned as forfeited under this Act shall, by direction of the Collector or other principal officer of the Customs at the port where the seizure has been secured be sold at public auction; and the proceeds of such sale shall be applied as follows: The amount chargeable for the custody of the property seized shall first be deducted and paid over for that service; one half of the remainder shall be paid without deduction to the officer or

Application of proceeds of sale.

person seizing the same; and the other half, after first deducting therefrom all costs incurred, shall be paid to the Receiver General of Canada through the Department of Marine and Fisheries; but the Governor in Council, may, nevertheless, direct that any ship, vessel, boat or goods and the tackle, rigging, apparel, furniture, stores and cargo seized and forfeited shall be destroyed, or be reserved for the public service.

Proviso: vessels, &c., may be reserved for public service.

7. Any penalty or forfeiture under this Act may be prosecuted and recovered in any Court of Vice-Admiralty within Canada.

Forfeiture, how enforced.

8. The Judge of the court of Vice-Admiralty may, with the consent of the person seizing any goods, ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo, as forfeited under this Act, order the re-delivery thereof, on security by bond to be given by the party, with two sureties, to the use of Her Majesty: and in case any goods, ship, vessel or boat, or the tackle, rigging, apparel, furniture, stores and cargo so re-delivered is condemned as forfeited, the value thereof shall be paid into court and distributed as above directed.

Vessel, &c., may be released on security being given.

Value to be distributed in case of condemnation.

9. Her Majesty's Attorney General for Canada may sue for and recover in Her Majesty's name any penalty or forfeiture incurred under this Act.

Attorney-General for Canada to sue.

10. In case a dispute arises as to whether any seizure has or has not been legally made or as to whether the person seizing was or was not authorized to seize under this Act, oral evidence may be heard thereupon, and the burden of proving the illegality of the seizure shall be upon the owner or claimant.

As to proof of legality of seizure.

11. No claim to anything seized under this Act and returned into any court of Vice-admiralty for adjudication shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed: which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

Claims must be made on oath.

12. No person shall enter a claim to anything seized under this Act until security has been given in a penalty not exceeding two hundred and forty dollars to answer and pay costs occasioned by such claim; and in default of security the things seized shall be adjudged forfeited, and shall be condemned.

And security must be given

13. No Writ shall be sued out against any officer or other person authorized to seize under this Act for anything done under this Act, until one month after notice in writing

Protection of officers, &c., acting under this Act.

delivered to him or left at his usual place of abode by the person intending to sue out such Writ,his Attorney or Agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his Attorney or Agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

Limitation of suits.

**14.** Every such action shall be brought within three months after the cause thereof has arisen.

If judgment be for the claimant, but there was probable cause of seizure, no costs allowed.

**15.** If on any information or suit brought to trial under this Act on account of any seizure, judgment shall be given for the claimant and the Judge or Court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs,nor shall the person who made the seizures be liable to any indictment or suit on account thereof; and if any suit or prosecution be brought against any person on account of any seizure under this Act, and judgment be given against him, and the court or judge shall certify that there was probable cause for the seizure, then the Plaintiff, besides the thing seized or its value, shall not recover more than three and a half cents damages, nor any costs of suit,nor shall the Defendant be fined more than twenty cents.

Tender of amends.

**16.** Any officer or person who has made a seizure under this Act may, within one month after notice of action received,tender amends to the party complaining, or to his Attorney or Agent, and may plead such tender.

Limitation for penalties.

**17.** All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.

As to appeals from decrees under this Act.

**18.** No appeal shall be prosecuted from any decree, or sentence of any Court touching any penalty or forfeiture imposed by this Act, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

Governor in Council may relieve from penalty.

**19.** In cases of seizure under this Act, the Governor in Council may. by order, direct a stay of proceedings; and in cases of condemnation may relieve from the penalty in whole or in part, and on such terms as may be deemed right.

Act to apply to inland waters; and other Courts substituted for Vice-Admiralty in such case.

**20.** The several provisions of this Act shall apply to any foreign ship, vessel or boat in or upon the Inland Waters of Canada; and the provisions hereinbefore contained in respect to any proceedings in a court of Vice-Admiralty shall, in the case of any foreign ship, vessel or boat, in or upon the Inland Waters of Canada, apply to, and any penalty or forfeiture in

respect thereof uhall be prosecuted and recovered in one of the Superior Courts of the Province within which such cause of prosecution may arise.

Certain enactments of N.S. and N.B. not to apply to cases provided for by this Act.

**21.** Neither the ninety-fourth chapter of the Revised Statutes of Nova Scotia, (third series,) "*Of the Coast and Deep Sea Fisheries*," nor the Act of the Legislature of the Province of Nova Scotia, passed in the twenty ninth year of Her Majesty's Reign, chapter thirty-five amending the same, nor the Act of the Legislature of the Province of New Brunswick passed in the sixteenth year of Her Majesty's reign, chapter sixty-nine, intituled "*An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade*," shall apply to any case to which this Act applies; and so much of the said chapter and of each of the said Acts as makes provision for cases provided for, by this Act, is hereby declared to be inapplicable to such cases.

# 33 VICTORIA.

## CHAP. 15.

An Act to amend the Act respecting Fishing by Foreign Vessels.

[*Assented to 12th May*, 1870.]

Preamble.

WHEREAS it is expedient, for the more effectual protection of the in-shore fisheries of Canada against intrusion by foreigners, to amend the Act intituled "*An Act respecting Fishing by Foreign Vessels*," passed in the thirty-first year of Her Majesty's Reign: Therefore Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Sec. 3 of 31 V., c. 61, repealed, and new section substituted.

1. The Third Section of the above cited Act shall be, and is hereby repealed, and the following section is enacted in its stead:—

Vessels found hovering in British waters may be brought into port and examined.

"3. Any one of such officers or persons as are above-mentioned may bring any ship, vessel, or boat being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port, and search her cargo, and may also examine the Master upon oath touching the cargo and voyage; and if the Master, or person in command, shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

Forfeiture for fishing without a license, &c.

The two Acts one.

2. This Act shall be construed as one with the said Act "*respecting Fishing by Foreign Vessels.*"

# 34 VICTORIA.

## CHAP. 23.

An Act further to amend the Act respecting Fishing by Foreign Vessels.

[*Assented to April 14th*, 1871.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— Preamble.

**1.** The fifth section of the Act *respecting fishing by foreign vessels*, passed in the thirty-first year of Her Majesty's reign, chapter sixty-one, is hereby repealed, and the following section is hereby enacted in its stead. 31 V., c. 61, s. 5, repealed.

"5. Goods, ships, vessels and boats, and the tackle, rigging, "apparel, furniture, stores and cargo seized as liable to "forfeiture under this Act, shall be forthwith delivered into "the custody of such fishery officer, or customs officer, or "other person, as the Minister of Marine and Fisheries may, "from time to time, direct, or retained by the officer making "the seizure in his own custody if so directed by the "Minister, in either case to be secured and kept as other "goods, ships, vessels and boats, and the tackle, rigging, "apparel, furniture, stores and cargo seized are directed by "the laws in force in the Province in which the seizure is "made, to be secured and kept." New section. Custody of vessels, &c., seized.

**2.** The sixth section of the said Act is hereby repealed, and the following section is hereby enacted in its stead. Section 6 repealed.

"6. All goods, vessels and boats, and the tackle, rigging, "apparel, furniture, stores and cargo condemned as forfeited "under this Act, shall be sold by public auction, by direction "of the officer having the custody thereof, under the "provisions of the next preceding section of this Act, and "under regulations to be, from time to time, made by the "Governor in Council; and the proceeds of every such sale "shall be subject to the control of the Minister of Marine "and Fisheries, who shall first pay therefrom all necessary "costs and expenses of custody and sale, and the Governor "in Council may, from time to time, apportion three-fourths, New section. Sale of goods, vessels, &c., seized.

Appropriation of proceeds.

"or less, of the net remainder, among the officers and crew "of any Queen's ship, or Canadian Government vessel, from "on board of which the seizure was made, as he may think "right, reserving for the Government, and paying over to "the Receiver General, at least one-fourth of such net "remainder, to form part of the Consolidated Revenue Fund "of Canada; but the Governor in Council may, nevertheless, "direct that any goods, vessel or boat, and the tackle, "rigging, apparel, furniture, stores and cargo, seized and "forfeited shall be destroyed, or be reserved for the public "service."

Proviso.

Act to be one with amended Act.

**3.** This Act shall be construed as one with the Act hereby amended; and the sixth section of the said Act, as contained in the second section of this Act, shall apply to all goods, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo, condemned under the said Act before the passing of this Act, and to the proceeds of the sale thereof, remaining to be applied and paid at the time of the passing of this Act.

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# 46 VICTORIA.

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## CHAP. 27.

An Act to extend to British Columbia the Act relating to fishing by Foreign Vessels.

[*Assented to 25th May*, 1883.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Act 31 Vic., c. 61, extended to B. Col.

**1.** The Act thirty-first Victoria, chapter sixty-one, intituled "*An Act respecting fishing by foreign vessels*," is hereby extended to the Province of British Columbia.

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# 49 VICTORIA.

## CHAP. 114.

An Act further to amend the Act respecting Fishing by Foreign Vessels.

(*Reserved by the Governor General on Wednesday, 2nd June, 1886, for the signification of the Queen's pleasure thereon. Royal Assent given by Her Majesty in Council on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.*)

Preamble. WHEREAS it is expedient for the more effectual protection of the inshore fisheries of Canada, against intrusion by foreigners, to further amend the Act intituled "*An Act respecting Fishing by Foreign Vessels*," passed in the thirty-first year of Her Majesty's reign, and chaptered sixty-one: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— 31 V., c. 61.

Substituted S. 3 repealed. **1.** The section substituted by the first section of the Act thirty-third Victoria, chapter fifteen, intituled "*An Act to amend the Act respecting Fishing by Foreign Vessels*," for the third section of the hereinbefore recited Act, is hereby repealed, and the following section substituted in lieu thereof: New section.

Vessels found in British waters may be brought into port and examined. "**3.** Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of four hundred dollars; and if such ship, vessel or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (*a*) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of Forfeiture in cases specified.

the coasts, bays, creeks or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel or boat, under the first section of this Act, or (*b*) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

Repeal.

**2.** The Acts mentioned in the schedule hereto are hereby repealed.

Construction of this Act.

**3.** This Act shall be construed as one with the said "*Act respecting Fishing by Foreign Vessels*" and the amendments thereto.

## SCHEDULE.

### Acts of the Legislature of the Province of Nova Scotia.

| Year, Reign, and Chapter. | Title of Act. | Extent of Repeal. |
|---|---|---|
| Revised Statutes, 3rd Series, c. 94. | Of the Coast and Deep Sea Fisheries..... | The whole. |
| 29 Vic. (1866) c. 35.. | An Act to amend Chapter 94 of the Revised Statutes "Of the Coast and Deep Sea Fisheries"..... | The whole. |

### Act of the Legislature of the Province of New Brunswick.

| | | |
|---|---|---|
| 16 Vic. (1853) c. 69.. | An Act relating to the Coast Fisheries and for the prevention of illicit trade..... ..... | The whole. |

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# THE REVISED STATUTES OF CANADA.

## Vol. II.

## CHAPTER 94.

An Act respecting fishing by Foreign Vessels A.D. 1886.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Governor may grant licenses to foreign vessels, &c., to fish in Canadian waters.

**1.** The Governor in Council may, from time to time, grant to any foreign ship, vessel or boat, or to any ship, vessel or boat not navigated according to the laws of the United Kingdom or of Canada, at such rate and for such term not exceeding one year, as he deems expedient, a license to fish for, take, dry or cure any fish of any kind whatsoever, in British waters, within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the limits specified and described in the first article of the convention between His late Majesty King George the Third and the United States of America, made and signed at London, on the twentieth day of October, one thousand eight hundred and eighteen 31 V., c. 61, s. 1;—46 V., c. 27, s. 1.

Certain British or Canadian officers may board vessels hovering in such waters.

**2.** Any commissioned officer of Her Majesty's navy, serving on board of any vessel of Her Majesty's navy cruising and being in the waters of Canada for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer or stipendiary magistrate, on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the customs of Canada, sheriff, justice of the peace or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat within any harbor in Canada or hovering in British waters within three marine

miles of any of the coasts, bays, creeks or harbors in Canada, and stay on board so long as she remains within such harbor or distance. 31 V., c. 61, s. 2.

Vessels found hovering in British waters may be brought into port and examined.

**3.** Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters, within three marine miles of any of the coasts, bays, creeks or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of four hundred dollars; and if such ship, vessel or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (*a*) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel or boat, under the first section of this Act, or (*b*) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited. 49 V., c. 114, s. 1.

Forfeiture for fishing without a license, &c.

And for entering such waters for an unlawful purpose.

Vessels, &c., forfeited may be seized.

**4.** All goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any such opposition, is guilty of a misdemeanor, and liable to a fine of eight hundred dollars and to two years' imprisonment. 31 V., c. 61, s. 4.

Penalty for resisting seizure.

Custody of vessels, &c., seized.

**5.** Goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of such fishery officer, or customs officer or other person, as the Minister of Marine and Fisheries, from time to time, directs, or shall be retained by the officer making the seizure in his own custody, if so directed by the Minister,—and in either case shall be secured and kept as other goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the Province in which the seizure is made, to be secured and kept. 34 V., c. 23, s. 1.

Sale of goods, vessels, &c., seized.

**6.** All goods, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo condemned as forfeited under this Act, shall be sold by public auction, by direction

of the officer who has the custody thereof, under the provisions of the next preceding section of this Act, and under regulations made, from time to time, by the Governor in Council; and the proceeds of every such sale shall be subject to the control of the Minister of Marine and Fisheries, who shall first pay thereout all necessary costs and expenses of custody and sale; and the Governor in Council may, from time to time, apportion three-fourths, or less, of the net remainder, among the officers and crew of any of Her Majesty's ships or Canadian Government vessel, from on board of which the seizure was made, as he thinks right,—reserving to the Crown and paying over to the Minister of Finance and Receiver General, at least one-fourth of such net remainder, to form part of the Consolidated Revenue Fund of Canada; but the Governor in Council may, nevertheless, direct that any goods, vessel or boat, and the tackle, rigging, apparel, furniture, stores and cargo seized and forfeited, shall be destroyed, or be reserved for the public service. 34 V., c. 23, s. 2.

Application of proceeds.

Proviso.

**7.** Every penalty or forfeiture under this Act may be recovered or enforced in any court of vice-admiralty within Canada. 31 V., c. 61, s. 7.

Forfeiture, how enforced.

**8.** The judge of the court of vice-admiralty may, with the consent of the person who seizes any goods, ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo, forfeited under this Act, order the re-delivery thereof, on security by bond to be given by the party, with two sureties, to the use of Her Majesty; and if any goods, ship, vessel or boat, or the tackle, rigging, apparel, furniture, stores and cargo so re-delivered are condemned as forfeited, the value thereof shall be paid into court and distributed as hereinbefore directed. 31 V., c. 61, s. 8.

Vessel, &c., may be released on security being given.

Value to be distributed in case of condemnation.

**9.** The Attorney General of Canada may, in Her Majesty's name, sue for or enforce any penalty or forfeiture incurred under this Act. 31 V., c. 61, s. 9.

Attorney General of Canada to sue.

**10.** If a dispute arises as to whether any seizure has or has not been legally made or as to whether the person who seized was or was not authorized to seize under this Act, oral evidence may be taken and the burden of proving the illegality of the seizure shall lie upon the owner or claimant. 31 V., c. 61, s. 10.

As to proof of legality of seizure.

**11.** No claim to anything seized under this Act and returned into any court of vice-admiralty for adjudication shall be admitted unless the claim is entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed,—which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief. 31 V., c. 61, s. 11.

Claims must be made on oath.

And security must be given.

**12.** No person shall enter a claim to anything seized under this Act until security is given, in a penal sum not exceeding two hundred and forty dollars, to answer and pay costs occasioned by such claim; and in default of such security, the things seized shall be declared forfeited, and shall be condemned. 31 V., c. 61, s. 12.

Protection of officers, &c., acting under this Act.

**13.** No writ shall be sued out against any officer or other person authorized to seize under this Act for anything done under this Act, until one month after notice in writing has been delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent,—in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be admitted except such as is contained in such notice. 31 V., c. 61, s. 13.

Limitation of suits.

**14.** Every such action shall be brought within three months after the cause thereof has arisen. 31 V., c. 61, s. 14.

If judgment is for the claimant but there was probable cause of seizure, no costs allowed.

**15.** If on any information or suit brought to trial under this Act on account of any seizure, judgment is given for the claimant, and the court or judge certifies that there was probable cause for seizure, the claimant shall not be entitled to costs, and the person who made the seizure shall not be liable to any indictment or suit on account thereof; and if any suit or prosecution is brought against any person on account of any seizure under this Act, and judgment is given against him, and the court or judge certifies that there was probable cause for the seizure, the plaintiff, besides the thing seized or its value, shall not recover more than four cents damages, and shall not recover any costs, and the defendant shall not be fined more than twenty cents. 31 V., c. 61, s. 15.

Tender of amends.

**16.** Every officer or person who has made a seizure under this Act may, within one month after notice of action received, tender amends to the person complaining, or to his attorney or agent, and may plead such tender. 31 V., c. 61, s. 16.

Limitation of suits for penalties.

**17.** All actions for the recovery or enforcement of penalties or forfeitures imposed by this Act shall be commenced within three years after the offence committed. 31 V., c. 61, s. 17.

As to appeals from decrees under this Act.

**18.** No appeal shall be prosecuted from any decree, or sentence of any court, in respect of any penalty or forfeitu e imposed by this Act, unless the inhibition is applied for and decreed within twelve months from the decree or sentence being pronounced. 31 V., c. 61, s. 18.

Governor in Council may

**19.** In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings; and in cases of con-

demnation, may relieve from the penalty, in whole or in part, and on such terms as are deemed right. 31 V., c. 61, s. 19. relieve from penalty.

**20.** This Act shall apply to every foreign ship, vessel or boat in or upon the inland waters of Canada; and the provisions hereinbefore contained in respect of any proceedings in a court of vice-admiralty shall, in the case of any such foreign ship, vessel or boat, apply to the Maritime Court of Ontario and to the superior courts, and any penalty or forfeiture under this Act may be recovered or enforced in any of such courts in the Province within which the cause of prosecution arises. 31 V., c. 61, s. 20. Act to apply to inland waters; and other courts substituted for vice-admiralty in such case.

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# CHAPTER 71.

An Act respecting discipline on board of Canadian Government Vessels. A.D. 1886

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

Short title.

**1.** This Act may be cited as "*The Government Vessels Discipline Act.*" 33 V., c. 16, s. 1.

INTERPRETATION.

Vessels employed by Government.

**2.** Every vessel employed by the Government of Canada, either temporarily or permanently, shall be deemed while so employed to belong to the Government for the purposes and within the true intent and meaning of this Act. 33 V., c. 16, s. 12.

"Master" to mean officer in command for the time being.

**3.** In this Act, except in the next following section, the expression "master" includes any person for the time being lawfully in command or in charge of any such vessel as aforesaid, as the officer thereof highest in rank then on board; and the ship's book of every such vessel shall be conclusive evidence of the relative rank of every officer therein named; and the fact that any such officer was at any particular time in command or in charge of the vessel, and the signature of any such officer, as being so in command or in charge, shall not be called in question except by the Crown. 33 V., c. 16, s. 11.

SHIP'S BOOK.

Men engaged to have this Act read to them, and to sign ship's book.

**4.** The master of every vessel belonging to the Government of Canada shall cause every person engaged for service in such vessel, after having had this Act read to him, and before he enters upon the discharge of any duty on board of such vessel, to sign his name in the proper column of a book to be kept by the master for that purpose. 33 V., c. 16, s. 2.

Conditions of engagement of men, and what the ship's book shall show.

**5.** Such book shall contain a statement of the name of the vessel, the name of the master, and the year for which it is the ship's book of such vessel,—and also statements to the following effect, that is to say: that this Act has been

read to each person who has signed his name in the proper column, before he signed his name thereto; and that he has thereby consented to submit himself to the provisions of this Act, and to conduct himself in an orderly, faithful, honest and sober manner, and to be at all times diligent in the discharge of his duty, and to be obedient to the lawful commands of the master of the said vessel for the time being and of others his superior officers, whether on board, in boats, or on shore, in everything relating to the said vessel and the stores thereof and to this Act, and that any embezzlement, or wilful or negligent destruction or loss of or injury to any part of the stores of the said vessel shall be made good out of the wages of the person guilty of the same, and that if such person has entered himself as qualified for a duty which he proves incompetent to perform, he may be discharged or his wages may be reduced at the discretion of the master. 33 V., c. 16, s. 3, *part.*

Columns for certain matters.

**6.** Such book shall contain columns properly headed, as follows, that is to say:—

(*a.*) A column for the names of the persons engaged, including officers;

(*b.*) A column for the dates when engaged;

(*c.*) A column for the capacity in which each person is to serve, with the relative rank of the officers, indicated by numbers;

(*d.*) A column for the period during which each person is to serve;

(*e.*) A column for the rate of wages at which each person is to be paid;

(*f.*) A column for the names of the witnesses to each signature;

(*g.*) A column for the dates of signatures. 33 V., c. 16, s. 3, *part.*

Agreement to be read over, &c.

**7.** The contents of the said book shall be read by the master or other officer of such vessel to each man about to ship on board thereof, and every person so signing any such book shall thenceforth be subject to this Act for and during the period of his engagement as therein mentioned. 33 V., c. 16, s. 4.

DISCIPLINE.

Offences and their punishment.

**8.** Whenever any person subject to this Act commits any of the following offences, he shall be liable to be punished summarily on conviction before any commissioner of police appointed under the "*Act respecting the Police of Canada*," or before any justice of the peace, as follows, that is to say:—

Desertion.

(*a.*) For desertion he shall be liable to imprisonment for any term not exceeding four weeks with or without hard labor, and also to forfeit all or any part of the clothes and

effects he leaves on board, and all or any part of the wages or emoluments which he has then earned;

(*b.*) For neglecting or refusing, without reasonable cause, to join his vessel, or to proceed on any voyage or cruise in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, or for absence at any time without leave and without sufficient reason, from his vessel or from his duty not amounting to desertion, he shall be liable to imprisonment for any term not exceeding four weeks with or without hard labor, and also at the discretion of the commissioner, or justice, to forfeit out of his wages a sum not exceeding the amount of ten days' pay; Neglecting or refusing to join, or to proceed to sea. Absence without leave.

(*c.*) For quitting the vessel without leave after her arrival in port at the close of the season of navigation, and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding ten days' pay; Quitting without leave before ship is secured.

(*d.*) For wilful disobedience to any lawful command, he shall be liable to imprisonment for any term not exceeding four weeks, with or without hard labor, and also, at the discretion of the commissioner or justice, to forfeit out of his wages a sum not exceeding two days' pay; Act of wilful disobedience.

(*e.*) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any term not exceeding four weeks, with or without hard labor, and also, at the discretion of the commissioner or justice, to forfeit for every twenty-four hours' continuance of such disobedience or neglect, a sum not exceeding two days' pay; Continued disobedience.

(*f.*) For assaulting any master or officer of any Canadian Government vessel, he shall be liable to imprisonment for any term not exceeding four weeks, with or without hard labor; Assault on officers.

(*g.*) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the vessel, or the progress of the voyage, or the continuance of the cruise, he shall be liable to imprisonment for any term not exceeding four weeks, with or without hard labor; Combining to disobey.

(*h.*) For wilfully damaging the vessel, or embezzling or wilfully damaging any of her stores, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the commissioner or justice, to imprisonment for any term not exceeding four weeks, with or without hard labor. 33 V., c. 16, s. 5. Wilful damage or embezzlemen

**9.** Upon the commission of any of the offences enumerated in the next preceding section, an entry thereof shall be made in the log-book, and shall be signed by the master and also by one of the officers or one of the crew; and the offender, if still in the vessel, shall before the next subsequent arrival of the vessel at any port, or if she is at the time in port, before Entry of offence to be made in the log-book, and to be read over, and a copy given to the offender, and

his reply, if any, to be also entered.

her departure therefrom, be furnished with a copy of such entry, and have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, and that the same has been so read over as aforesaid, and the reply, if any, made by the offender, shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced and proved, and in default of such production and proof, the commissioner or justice hearing the case may, in his discretion, refuse to receive evidence of the offence. 33 V., c. 16, s. 6.

Master or officer may apprehend deserters without warrant.

**10.** Whenever, either at the commencement or during the progress of any voyage or cruise, any person subject to this Act neglects or refuses to join, or deserts from, or refuses to proceed on any voyage or cruise, in any vessel belonging to the Government of Canada in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any officer of such vessel may, in any place in Canada, with or without the assistance of the police constables appointed under the said "*Act respecting the Police of Canada*," who are hereby directed to give the same, if required, apprehend him without first procuring a warrant,—and may thereupon in any case, and shall in case he so requires and it is practicable, convey him before some commissioner of police appointed under the said Act, or before some justice of the peace, to be dealt with according to law,—and may, for the purpose of conveying him before such commissioner or justice, detain him in custody for a period not exceeding twenty-four hours or such shorter time as is necessary, or may, if he does not so require, or if there is no such commissioner or justice at or near the place, at once convey him on board; and if any such apprehension appears to the commissioner or justice before whom the case is brought, to have been made on improper or on insufficient grounds, the master or officer who makes the same or causes the same to be made, shall incur a penalty not exceeding one hundred dollars; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension. 33 V., c. 16, s. 7.

Penalty for improper arrest.

Deserters may be sent on board in lieu of being imprisoned.

**11.** Whenever a person subject to this Act is brought before any commissioner of police, or justice of the peace, on the ground of his having neglected or refused to join or proceed on any voyage or cruise, in any vessel belonging to the Government of Canada, in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such commissioner or justice may, if the master or any officer thereof so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage or cruise,

or deliver him to the master or any officer of the vessel, to be by him so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master, by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn. 33 V., c. 16, s. 8.

Person imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.

**12.** If any person subject to this Act is imprisoned on the ground of his having neglected or refused to join or to proceed on any voyage or cruise, in any vessel belonging to the Government of Canada in which he is engaged to serve, or of his having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment, and before his engagement is at an end, his services are required on board his vessel, any justice of the peace may, at the request of the master or of any officer thereof, cause such person to be conveyed on board his said vessel for the purpose of proceeding on the voyage or cruise, or to be delivered to the master or any officer of the same, to be by him so conveyed, notwithstanding that the term for which he was sentenced to imprisonment has not expired. 33 V., c. 16, s. 9.

Facilities for proving desertion so far as concerns forfeiture of wages.

**13.** Whenever a question arises, whether the wages of any person subject to this Act are forfeited for desertion, it shall be sufficient for the person insisting on the forfeiture to show that such person was duly engaged in, or that he belonged to the vessel from which he is alleged to have deserted, and that he quitted such vessel before the completion of the period of his engagement, and that an entry of the desertion has been duly made in the log-book; and thereupon the desertion shall, as far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the person can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the commissioner of police or justice of the peace, hearing the case, that he had sufficient reasons for leaving his vessel. 33 V., c. 16, s. 10.

What justices shall have jurisdiction

**14.** Any justice of the peace for the county or district in which is situated the port where the vessel, on board of which the offence has been committed, touches next after the time of its commission, shall have jurisdiction over an offence committed against the provisions of this Act, and any sentence of imprisonment under this Act may be carried out in the common gaol of such county or district. 33 V., c. 16, s. 13.

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1005

# CHAPTER 96.

An Act to encourage the development of the Sea Fisheries and the building of Fishing Vessels. A.D. 1886.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Annual grant of $150,000 in aid of sea fisheries.

**1.** The Governor in Council may authorize the payment, out of the Consolidated Revenue Fund of Canada, of an annual grant not exceeding one hundred and fifty thousand dollars, to aid in the development of the sea fisheries of Canada, and the encouragement of the building and fitting out of improved fishing vessels, and the improvement of the condition of the fishermen. 45 V., c. 18, s. 1, *part.*

How to be appropriated.

**2.** Such grant shall be appropriated for the said purposes at such times and by such instalments, in each year, as the Governor in Council directs. 45 V., c. 18, s. 1, *part.*

Yearly statement for Parliament and what it shall show.

**3.** During each session, a statement shall be laid before both Houses of Parliament, of the mode in which it is proposed to distribute the grant in the ensuing year, and the assent of Parliament shall be obtained thereto. 45 V., c. 18, s. 2, *part.*

Yearly report to Parliament and what it shall show.

**4.** A statement shall be laid before both Houses of Parliament within the first twenty days of each session, of the mode in which the said grant has been expended, together with copies of all Orders in Council relating to such grant and expenditure. 45 V., c. 18, s. 2, *part.*

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# CHAPTER 91.

An Act respecting the Protection of Navigable Waters. A.D. 1886.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Interpretation.

**1.** In this Act, unless the context otherwise requires,—

"Vessel."

(*a.*) The expression "vessel" includes every description of ship, boat or craft of any kind, and whether propelled by steam or otherwise, and whether used as a sea-going vessel or on inland waters only;

"Owner."

(*b.*) The expression "owner" means the registered owner. 49 V., c. 36, s. 1.

Notice of any obstruction to be given to the Minister of Marine and Fisheries.

**2.** If the navigation of any navigable water, over which the Parliament of Canada has jurisdiction, is obstructed, impeded or rendered more difficult or dangerous by the wreck, sinking, lying ashore or grounding of any vessel or part thereof or other thing, the owner, master or person in charge of such vessel or other thing, by which any such obstruction or obstacle is caused, shall forthwith give notice of the existence thereof to the Minister of Marine and Fisheries, or to the collector of customs at the nearest or most convenient port, and shall place and, as long as such obstruction or obstacle continues, shall maintain, by day a sufficient signal and by night a sufficient light to indicate the position thereof,—and in default of giving such notice and placing and maintaining such signal and light shall, on summary conviction before two justices of the peace, be liable to a penalty of forty dollars for every day during which he neglects so to do without lawful or reasonable excuse. 49 V., c. 36, s. 2.

Signal to be placed to indicate such obstruction.

Penalty for neglect.

Minister may cause signal to be placed.

**3.** The Minister of Marine and Fisheries may cause such signal and light to be placed and maintained, if the owner, master or person in charge of such vessel or other thing by which the obstruction or obstacle is caused fails or neglects so to do. 49 V., c. 36, s. 3.

Minister may cause obstruction to be removed.

**4.** If, in the opinion of the Minister of Marine and Fisheries, the navigation of any navigable water as aforesaid is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking or lying ashore or ground-

ing of any vessel or of any part thereof, or other thing, the said Minister may, under the authority of the Governor in Council (if such obstruction or obstacle continues for more than twenty-four hours), cause the same to be removed or destroyed in such manner and by such means as he thinks fit,—and may use gunpowder or other explosive substance for that purpose if he deems it advisable,—and may cause such vessel, or its cargo, or any thing causing or forming part of such obstruction or obstacle to be conveyed to such place as he thinks proper, and to be there sold by auction or otherwise as he deems most advisable,—and may apply the proceeds of such sale to make good the expenses incurred by him in placing and maintaining any signal or light to indicate the position of such obstruction or obstacle, or in the removal, destruction or sale of such vessel, cargo or thing,—paying over any surplus of such proceeds to the owner of the vessel or thing sold, or other persons entitled to such proceeds or any part thereof, respectively. 49 V., c. 36, s. 4.

Sale of vessel causing obstruction for costs incurred.

Recovery of cost if proceeds of sale are insufficient to defray it.

**5.** Whenever, under the provisions of this Act, the Minister of Marine and Fisheries has caused any signal or light to be placed and maintained to indicate the position of any obstruction or obstacle, or has, with the authority of the Governor in Council, caused to be removed or destroyed any obstruction or obstacle to the navigation of any navigable water occasioned by the wreck, sinking or lying ashore or grounding of any vessel, or part thereof, or other thing, and the cost of placing and maintaining such signal or light or of removing or destroying such vessel or part thereof or other thing has been defrayed out of the public moneys of Canada,—and the net proceeds of the sale under this Act of such vessel or its cargo, or the thing, which caused or formed part of such obstruction, are not sufficient to make good the expenses incurred for the purposes aforesaid and the costs of sale, the amount by which such proceeds fall short of the expenses so defrayed as aforesaid, and such costs—or the whole amount of such expenses, if there is nothing which can be sold as aforesaid—shall be recoverable with costs by the Crown from the owner of such vessel or other thing or from the managing owner or from the master or person in charge thereof at the time such obstruction or obstacle was occasioned, or from any person through whose act or default, or through the act or default of whose servants such obstruction or obstacle was occasioned or continued; and any sum so recovered shall form part of the Consolidated Revenue Fund of Canada. 49 V., c. 36, s. 5.

And from whom.

Existing rights and liabilities not impaired.

**6.** Nothing in this Act shall be construed to exempt any owner, master or person from any obligation or responsibility with respect to any obstruction or obstacle imposed on him by any other law, or to derogate from or impair any

power or right vested by any such law in the Quebec Harbor Commissioners, or Montreal Harbor Commissioners, or other authority, with respect to such obstruction or obstacle, and not incompatible with the powers hereby vested in the Minister of Marine and Fisheries. 49 V., c. 36, s. 6.

No sawdust or saw-mill rubbish to be thrown into navigable waters.

**7.** No owner or tenant of any saw-mill, or any workman therein or other person shall throw or cause to be thrown, or suffer or permit to be thrown, any sawdust, edgings, slabs, bark or rubbish of any description whatsoever, into any river, stream or other water, any part of which is navigable or which flows into any navigable water; and every person who violates the provisions of this section shall, on summary conviction, be liable, for a first offence, to a penalty of not less than twenty dollars, and for each subsequent offence, to a penalty of not less than fifty dollars:

Fishery officers to enforce this provision.

2. The several fishery officers shall, from time to time, examine and report on the condition of such rivers, streams and waters, and prosecute all persons violating the provisions of this section; and for enforcing the said provisions, such officers shall have and exercise all the powers conferred upon them for like purposes by "*The Fisheries Act*:"

Exemption by proclamation in certain cases.

3. The Governor in Council, when it is shown to his satisfaction that the public interest would not be injuriously affected thereby, may, from time to time, by proclamation published in the *Canada Gazette*, declare any such river, stream or water, or part or parts thereof, exempted from the operation of this section, in whole or in part, and may, from time to time, revoke such proclamation. 49 V., c. 36, s. 7.

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# 44 VICTORIA.

## CHAP. 28.

An Act to amend the Law respecting Documentary Evidence in certain cases.

[*Assented to* 21*st March*, 1881.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Modes in which *primâ facie* evidence of proclamations, &c., of Governor General, &c., may be given.

**1.** *Primâ facie* evidence of any proclamation, order, regulation or appointment, made or issued before or after the passing of this Act by the Governor General or by the Governor in Council, also of any proclamation, order or regulation or appointment made or issued before or after the passing of this Act, by or under the authority of any Minister or Head of any Department of the Government of Canada, may be given in all courts of justice established by the Parliament of Canada, and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority in all or any of the modes hereinafter mentioned, that is to say :—

Canada Gazette.

1. By production of a copy of the *Canada Gazette* purporting to contain a notice of such proclamation, order, regulation or appointment ;

Copy printed by Q.P.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Queen's Printer for Canada ;

Production of Order in Council, copy or extract certified.

3. By the production in the case of any proclamation, order or regulation issued by the Governor General or by the Governor in Council of a copy or extract purporting to be certified to be true by the Clerk, or assistant or acting Clerk of the Queen's Privy Council for Canada, and in the case of any proclamation, order, regulation or appointment made or issued by or under the authority of any such Minis-

ter or Head of a Department, by the production of a copy or extract purporting to be certified as true by the Minister, or by his Deputy or acting Deputy, or by the Secretary or acting Secretary of the Department over which he presides.

Modes in which *primâ facie* evidence of proclamations, &c., by Lieutenant-Governors of Provinces, &c., may be given.

**2.** *Primâ facie* evidence of any proclamation, order, regulation or appointment made or issued before or after the passing of this Act by a Lieutenant-Governor of any Province in Canada, or by his Executive Council, or by or under the authority of any member of such Executive Council, being the Head of any Department of the Provincial Government of the Province, may be given in all courts of justice established by the Parliament of Canada and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority in all or any of the modes hereinafter mentioned, that is to say :—

Official Gazette.

1. By the production of a copy of the official gazette for the Province purporting to contain a notice of such proclamation, order, regulation or appointment;

Copy by Government Printer.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Government Printer for the Province ;

Certified copy, extract, &c.

3. By the production of a copy or extract of such proclamation, order, regulation or appointment certified to be true by the Clerk or assistant or acting Clerk of the Executive Council, or by the Head of any Department of a Provincial Government, or by his Deputy or acting Deputy, as the case may be.

Proof of hand writing, &c., not requisite.

**3.** No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation or appointment ; and any such copy or extract may be in print or in writing, or partly in print and partly in writing.

Certain offences in relation to such proclamations, &c., to be felony ; and punishment of offenders.

**4.** If any person—

False statement as to printing.

1. Prints any proclamation, order, regulation or appointment, or notice thereof and causes the same falsely to purport to have been printed by the Queen's Printer or the Government Printer for any Province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed ; or—

Forging or tendering

2. Forges, or tenders in evidence knowing the same to have been forged, any certificate authorized to be made or

given by this Act or by any Act of Parliament, or by any Act of a Provincial Legislature, for the purpose of certifying or verifying any copy or extract of any proclamation, order, regulation, appointment, paper, document or writing of which a certified copy may lawfully be offered as *primâ facie* evidence, he shall be guilty of a felony, and shall on conviction be liable to be imprisoned in the penitentiary for five years, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years. forged certificate, &c.

**5**. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at common law. How this Act shall be construed.

**6**. This Act may be cited as "The Documentary Evidence Act, Canada, 1881." Short title.

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OTTAWA.—Printed by BROWN CHAMBERLIN, Law Printer to the Queen's Most Excellent Majesty.

# REPORT

ON THE

# Fishery Articles of Treaties

BETWEEN

## GREAT BRITAIN AND THE UNITED STATES OF AMERICA,

AND

## QUESTIONS ARISING OUT OF THE SAME.

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By Mr. W. F. WHITCHER, Commissioner of Fisheries, CANADA.

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With a Map of British North American Waters.



OTTAWA.

1870.

# REPORT

ON THE

# Fishery Articles of Treaties, &c.

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## I.—THE ORIGIN OF AMERICAN CLAIMS TO PARTICIPATE IN THE COLONIAL FISHERIES.

Americans found their original claim to equal fishery rights in the Anglo-American seas on the share that New Englanders bore whilst British subjects in the conquest of these Colonies from the French ; and also upon their use of the fisheries in common with those Colonists from whom they afterwards voluntarily separated themselves. Excepting along the coast of Labrador and around the southwestern parts of the Gulf of St. Lawrence, off the Bay of Chaleur and the New Brunswick coast, they had fished freely before their separation from Great Britain. In the negotiations which preceded the peace of 1783 they drove a hard bargain for co-extensive privileges of fishery. It was of vital moment to them to secure some foothold, as a new nation, from which other acquisitions might in time be gained. Through force of strong language, and by threats to break off negociations, but chiefly from the characteristic temper of Great Britain to give way for peace sake, the American Commissioners managed to secure much more favorable terms than in fact and justice they were entitled to.

## II.—THE FISHERY ARTICLE OF THE TREATY OF 1783.*

The Definitive Treaty of Peace and Friendship between His Britannic Majesty and the United States of America, signed at Paris on the 3rd of September, 1783, contains the following provision :

" ART. III.—It is agreed, that the people of the United States shall continue " to enjoy unmolested the right to take fish of every kind on the Grand Bank " and on all the other banks of Newfoundland : also in the Gulf of St. Lawrence, " and at all other places in the sea, where the inhabitants of both countries used

* A Collection of Treaties between Great Britain and other Powers—By George Chalmers ; London. 1790, vol. 1.

"at any time heretofore to fish. And also that the inhabitants of the United "States shall have liberty to take fish of every kind on such part of the coast of "Newfoundland, as British fishermen shall use (but not to dry or cure the same on "that Island) and also on the coasts, bays, and creeks of all other of His Britannic "Majesty's dominions in America; and that the American fishermen shall have "liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of "Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain "unsettled; but so soon as the same, or either of them shall be settled, it shall "not be lawful for the said fishermen to dry or cure fish at such settlement, with-"out a previous agreement for that purpose with the inhabitants, proprietors, or "possessors of the ground."

The guarded language of this article is somewhat remarkable. It had been contended on the part of America that her citizens should enjoy common *rights* of fishing the same as when they were British colonists.* And the use of the word "right" was urged very warmly by Mr. Adams.† In that part of the article which relates to fisheries "IN THE SEA," a concurrent "right" is agreed to; but in the coast and Labrador fishings simple "liberty" was acceded to.‡ This text proves how marked, how emphatic was the distinction between a recognized "right" and a conceded "liberty,"—the former being susceptible of permanence, and the latter existing at will.

## III.—THE TREATY OF 1783 AS AFFECTED BY THE WAR OF 1812.

The two-fold sense of Article III of the Treaty of 1783 has been before observed. In the first portion of the article there is a clear recognition of a continuing "right" of fishery || which "the people of the United States shall continue to enjoy"—in those parts of "*the sea*" which had been commonly used by Colonists to the exclusion of the French, then, in the conjunct portion is an equally plain and distinct concession of "liberty" to use certain specified waters and coasts within the jurisdictional limits of the British possessions in concurrence with His Britannic Majesty's loyal subjects.§

* "We had fought for, had won and had enjoyed the fishing grounds as British subjects."—*Mr. Rush.*

† "Gentlemen, is there or can there be a clearer right? In former Treaties, that of Utrecht and "that of Paris, France and England have claimed the right and used the *word* * * * * If Heaven "in the creation gave a *right*, it is ours at least as much as yours."—*Annals of Diplomacy.*

‡ "The rights acknowledged by the treaty of 1783, were not only distinguishable from the "*liberties* conceded by the same treaty, in the foundation on which they stand, but they were care-"fully distinguished in the wording of the Treaty." *Diplomatic Correspondence.—Lord Bathurst's despatch, 30th December*, 1815.

|| "It was therefore surely obvious that the word *right* was throughout the treaty used as appli-"cable to what the United States were to enjoy in virtue of a recognized independence; and the "word *liberty* to what they were to enjoy as concessions strictly dependent on the treaty itself." —*Diplomatic Cor. Lord Bathurst's despatch, Oct.* 30, 1815.

"The distinction between the special liberty and the general right appears to have been well "understood by the American Ministers who negotiated the treaty of 1783, and to have been clearly "marked by the very import of the terms which they employed."—*Mr. Russell.*

§ The word "right" here means *just claim*: The term "liberty" signified *privilege* or *permission granted.*—Ed

At the Treaty of Peace the high contracting parties must have stood each on a separate footing. They had been at war, and there was then an inchoate national sovereignty, already recognized in the provisional articles of 1782, and afterwards completed and confirmed by the recognition of the independence of the United States.* Their respective sea rights would, without any stipulations, be those recognized and laid down by the Law of Nations. British jurisdiction over the waters around the coasts of so much as should remain to her of colonial empire in North America would extend at least three miles—the bays, harbors &c., being defined customarily by headlands.† Within such extent she was thenceforth absolute and sole proprietor. And it accorded as well with the relative positions as with the antecedents of both nations, that America should afterwards enjoy as a right the fisheries of the open sea, and that Great Britain should extend to her sovereign neighbour the liberty of using grounds formerly common, but now made exclusive by the recent definition of respective national possessions.

It has been argued that, in the recognition of the sovereignty of the United States there was implied a partition of all the fishery privileges in which their people had participated when colonists and British subjects. From which they assert an absolute right (to participate in all the fisheries) as "confirmed for ever," and as not affected by the war of 1812, but merely compromised in the subsequent convention.‡ While it was most obviously nothing more than a conceded liberty to obtain during pleasure.

American Ministers, in all of their correspondence, have laid great stress on the argument that the fishing liberties they had enjoyed under the treaty of independence were merely defined by the convention of 1818,—in fact, that it was a virtual continuance of the former treaty.‖ The position thus assumed is proclaimed by them to be quite unassailable.

At Ghent, in 1814, the American Commissioners went even further in asserting the principle that the treaty of 1783 is to be regarded as perpetual, and of the nature of a deed in which the fisheries are *an appurtenant of the soil conveyed or*

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* "His Britannic Majesty acknowledges the said United States, &c., &c., to be free, sovereign and "independent states, that He treats with them as such," &c., &c.—*Vide Article I of the Treaty of Paris, "in* 1783.

"We treated with our great adversary for peace, and desired it; *but we treated as a co-equal sovereign nation."—Rush's Diplomatic Relations, Philadelphia,* 1860.

† *A compendium of the Law of Nations, by G. F. Von Martens, London,* 1802.—*Law of Nations by Mons. de Vattel: Philadelphia,* 1858.

‡ *Vide Diplomatic Correspondence of Messrs. Stevenson, Upshur, Everett and Calhoun.*

‖ "Great Britain could not consider any one state at liberty to assign to a treaty made with her "such a peculiarity of character as should make it as to duration, an exception to all other treaties, "in order to found, on a peculiarity thus assumed, an irrevocable title to indulgences which had all "the features of temporary concessions."—*Diplomatic Correspondence. Lord Bathurst's despatch, Oct.* 30, 1815.

*parted with* : * and that, therefore, no stipulation was necessary or desirable to secure the perpetuity of the appendage more than of the territory itself.† The utter fallacy of this argument is made apparent by the fact that the fisheries *were then*, and had *always since* been, appendages of British soil. It would be an extraordinary abuse of language to attempt to prove by the concession of a privilege having its origin in common usage and convenient toleration, that there was implied the acknowledgment of an acquired "right" as between separate sovereignties. And it might be styled preposterous to claim that foreigners could continue to enjoy both the *usus* and the *fructus* of waters now no longer common, but the exclusive property and the dominion of another nation whose subjects alone should use them. It is doubly important to American views that the indefeasible character of the old treaty should be sustained, because of its use as corroborative of the "practical construction"‡ which their fishermen have put upon the renouncement in the new convention, and as vantage ground in any future discussion arising out of different constructions of the existing convention.

The pretension that the fishery article of the former treaty survived the rupture of 1812, is one which very little inquiry should dissipate. Apart from the general effect of hostilities, there are other elements in the duration of such engagements, as will be seen on reference to the following authorities :

"Treaties properly so called, the engagements of which imply a state of "amity between the contracting parties, cease to operate if war supervenes, unless "there are express stipulations to the contrary. It is usual on the signature of "a Treaty of Peace for Nations to renew expressly their previous Treaties, if they "intend that any of them should become once more operative. Great Britain in

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* "The point mainly discussed, as regards the Fisheries was whether the recognition of the "American 'right and liberty' to fish on the Banks of Newfoundland and elsewhere, in the 3rd "article of the treaty of 1783, was of a permanent character, or liable to be abrogated by war. The "British doctrine was, that the treaty of 1783, not being re-enacted or confirmed by the treaty of "Ghent, was annulled by the war of 1812. The United States, while they did not deny the general "rule that a war put an end to previous treaties, insisted that the rule was not applicable to the "treaty of 1783, which was a treaty of partition, and by which the rights of each party were laid down "as primary and fundamental ; so much of territory *and incidental rights* being allotted to one and so "much to the other."—*Editor's note, Wheaton, p.* 325, *Boston*, 1864.

NOTE.—This is but a specious pretension. An incidental right must be incident to something—territory or situation. Fishery in British waters formed no incident of American territory or maritime situation, after the United States became a separate nation.—*Ed.*

† "Mr. Adams suggested to his associates, and Mr. Clay embodied in a proposition to be pre-"sented to the British Commissioners, the principle that we held our rights of fishing by the same "tenure as we did our independence."—*Diplomatic Correspondence*, 1815 *to* 1818.

"The entire instrument implied permanence, and hence all the fishing rights secured under it to "the United States, were placed on the same foundation with their independence itself." —*Editor's note in Lawrence's edition of Wheaton's Law of Nations, p.* 325.

"The treaty of 1783, in relation to the fishing liberty, is abrogated by the war."—*Mr. Russell*, 11*th Feby*, 1815.

Treaties securing territory and establishing boundaries, might be in their nature perpetual. Perpetuity will be *quo ad* the acquisition of property, or territorial possessions ; but except by express agreement, there could be no common property in piscary subsisting within the jurisdictional waters of another power. Mr. Russell, one of the American negotiators of the treaty of Ghent, wrote in 1815 : "The immemorial enjoyment of a privilege within British jurisdiction, by British subjects, the inhabi-"tants of British Colonies, could not well be considered as evidence of a title to that privilege claimed "by the citizens of an independent republic, residing within the exclusive jurisdiction of that republic."

‡ *Vide Mr. Upshur's note to Mr. Everett*, 30*th June*, 1843.

"practice admits of no exception to the rule that all Treaties, as such, are put an "end to by a subsequent war between the contracting parties."—*The Law of Nations considered as independent political communities: By Travers Twiss, D. C. L., London*, 1861, *p.* 377. *Lord Bathurst's letter of October 30th*, 1815.

"A state of war abrogates Treaties previously existing between the belli- "gerents." *President's Message*, 1847. *Annual Register.*

"Treaties of boundary alone are regarded by jurists as perpetual." *Twiss' Law of Nations, London*, 1861.

"As a general rule, the obligations of Treaties are dissipated by hostility, 'and they are extinguished and gone for ever unless revived by a subsequent "Treaty." * * *

"All those duties of which the exercise *is not necessarily suspended by the "war*, subsist in their full force."—*Commentaries on American Law: By James Kent, New York*, 1848, *vol.* 1, *p.* 175.

"Agreements, the exercise of which *is inconsistent with a state of war*, neces- "sarily expire with the commencement of hostilities."—*Supreme Court of the United States, Sutton vs. Sutton, Russel and Mylnes' Reports, vol.* 1, *p.* 663.

"Permanent arrangements respecting *national rights* revive at peace, unless "waived *or new* and *repugnant stipulations be made.*"—*Chancellor Kent: Wheaton, p.* 494.

Even if the general rule that war ends treaties be denied, there exist here all the elements of abrogation.

First.—According to Chancellor Kent it is only as respects national "rights"* that revival at peace takes place; but a mere privilege ("liberty") is not provided for.

Second.—There was no renewal at the Treaty of Ghent.† Here was an intermediate compact in which some of the stipulations of the Treaty of Paris (1783) were reproduced, and boundaries were adjusted; but although mooted in the

* Wheaton, page 494.

† "During the negociations at Ghent, in 1814, the British plenipotentiaries gave notice that their "Government did not intend to grant to the United States gratuitously the privileges, formerly granted "by Treaty to them, of fishing within the limits of the British Sovereignty, and of using the shores of the "British territories for purposes connected with the British fisheries. In answer to this declaration "the American plenipotentiaries stated that they were not authorized to bring into discussion any of "the rights or liberties which the United States have heretofore enjoyed in relation thereto; from "their nature and from the peculiar character of the treaty of 1783, by which they were recognized, "no further stipulation has been deemed necessary by the Government of the United States to entitle "them to the full enjoyment of them all."—*Wheaton, p.* 463.

negotiations, the fishery subject found no place in the treaty. Thus indicating the designed omission of such other particulars.*

By article 8 of the same treaty in 1783, it had been agreed, "That the navi- "gation of the River Mississippi, from its source to the Ocean, should for ever "remain free and open to the subjects of Great Britain and the citizens of the "United States." And although it was described in that instrument as a "right" secured to British subjects for ever, it was withheld, and has been ever since enjoyed exclusively by the United States, because the participatory right *"had not been renewed by the Treaty of Ghent."*† If a definite "right" of navigation on the waters of a foreign state be annulled by war, how much more should a participant "liberty" of fishery be subject to the same contingency?‡

Third.—Fishery in common with British subjects became incompatible with hostilities. Exercise of the liberty conceded depended on friendly relations. It certainly was withdrawn by the one, as it was practically relinquished and abandoned by the other,‖ when a state of war destroyed all customs and concessions of an amicable nature.

Fourth.—New and repugnant stipulations were made by the first article of the Convention of 1818. So that, if not abrogated by any other act or omission, the third article of the treaty of 1783 was indisputably ended by the repugnant article of that convention.§

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* "The Treaty of Peace concluded at Ghent, in 1814, therefore contained no stipulation on the "subject; and the British Government subsequently expressed its intention to exclude the American "fishing vessels from the liberty of fishing within one marine league of the shores of the British "territories in North America, and from that of drying and curing their fish on the unsettled parts of "those territories, and, with the consent of the inhabitants within those parts which had become "settled since the peace of 1783."—*Wheaton, p.* 463.

Chancellor Kent states (vol. 1, p. 178), that the tenth article of the treaty of 1794 between Great Britain and the United States "was not impaired by the war of 1812," because it contained a stipulation to the effect that in the event of war it should not become rescinded.—*Ed.*

† "The stipulation in the Treaty of 1783, securing to British subjects a *right* to participate in its "navigation *not having been renewed by the Treaty of Ghent* 1814, the right of navigating the Miss- "issippi is now vested exclusively in the United States."—*Wheaton, page* 353.

‡ * * Americans may in their own favor wrest something from treaties beyond their true meaning; but surely they cannot, in the case of other nations object to the application of rules applied for their own aggrandizement. In a letter to the American Secretary of State, 22nd April 1822, one of the United States Commissioners acknowledges that "The British right of navigating "the river, within the American territory, was precisely similar to the American liberty of fishing "within the British territorial jurisdiction."—*Ed.*

‖ Andrews and Sabine admit, that during the war with England the distant fishing grounds were abandoned. Mr. Russell, writing to the United States Government, 11th February 1815, says "The "people of the United States had never, in fact, during that period, enjoyed the fishing privileges a "moment; being effectually prevented therefrom by the existing state of hostilities."—*Ed.*

§ The very fact of entering into the convention of 1818 entirely abandoned the ground of permanence in the treaty of 1783. If it was permanent, what need was there for later stipulations, which far from augmenting really diminished the freedom accorded by the former compact. None knew and felt this predicament more than did that able, astute and patriotic man, Mr. Secretary Webster: "It was undoubtedly an oversight in the Convention of 1818, &c., &c."

"Nothing could abrogate the rights and liberties of the United States, *but a renunciation* by the United States themselves."—*Diplomatic Correspondence, Mr. Adams' despatch, September* 15, 1815. *Ed.*

Another argument advanced in this connection is founded on prescription, * and relies on the authority of Vattel. That learned writer says: "But, if so far from making itself master of a fishery, "a nation has once acknowledged the com- "mon right of other nations to come and fish there, it can no longer exclude them "from it; *it has left that fishery in its primitive state of communion, at least with "respect to those who have been accustomed to take advantage of it.*"

Writers, who cite this passage always conveniently forget to explain, that the context refers to acquisition by a nation of fructuary rights in the open sea, contradistinguished from the exclusive piscary sanctioned by the public law and universal practice of nations as pertaining to jurisdictional waters.†

## IV.—POSITION OF AFFAIRS AFTER THE TREATY OF GHENT.‡

In the course of negotiations connected with this treaty, peace was repeatedly endangered by the extreme views of the Americans on the fishery question. Great Britain, adopting the rule of nations, regarded the "liberty" conceded by Art. 3 of the treaty of 1783 as having lapsed in the war just ended. || Americans claimed the same privileges as they had enjoyed before the Revolution,§ with such further freedom of new fishing grounds and inshore fisheries as they had, by practical participation, associated with the operations of their own fishermen. Their negotiators were directed to make no peace without confirming these lofty pretensions.¶ War should continue for ever rather than the United States should abandon "one iota"** of their extraordinary claims. The British ministers firmly insisted, but were willing to accept as a partial equivalent for continuance of the liberty allowed in 1783, the free navigation of the Mississippi. This reciprocal proffer was declined. Neither would yield. Ultimately the treaty was closed without any mention of fisheries,—Americans still nursing the notion that they would fall back upon their old policy of persistence in fishing over their neigh-

* * * "A free participation in the Sea fisheries, near the shores of the Colonies is regarded "as the just prescriptive privilege of our fishermen;—without such participation our deep sea fisheries "in that region will become valueless."—*Andrews, page* 35.

† "The use and enjoyment of navigation and fishery *in the sea*," *&c.*

"It is manifest that the use of *the open sea, &c.*"

"No nation, therefore, has a right to take possession of *the open sea*, or claim the sole use of it, "to the exclusion of other nations, &c. The right of navigating and fishing *in the open sea* being then "a right common to all men," &c.—*Vattel's Droit des Gens, L.* 1, *p.* 287.

"Prescription appears to me to be inapplicable to the parties and to the subject, and to be "defective both in fact and effect. * * * The inhabitants of the colonies originally constituting "the United States, even in their colonial condition, could not acquire against their sovereign any "right from long usage or mere lapse of time."—*Mr Russell,* 11th *Feby.*, 1815.

"A right to fish, or to trade, or to do any other act or thing within the exclusive jurisdiction "of a foreign state, is a simple power, a right of mere ability, depending on the will of such state, and "is consequently imprescriptible."—*Ibid.*

‡ *Signed at Ghent, 24th December,* 1814.

|| *Vide* Instructions from the British Government to the Governor of Newfoundland, 17th June, 1815; published in the appendix (A) from British state papers, vol. 2, p. 1171.

§ Mr. Adams' correspondence with Lords Bathurst & Castlereagh in September and October 1815, and in January 1816.

¶ "It was the first stumbling block and last obstacle to the conclusion of the treaty."—*Mr. Adams.*
"There shall be no peace without the fisheries."—*Mr. Monroe.*

** *Mr, Jno. Quincy Adams,* 28 *Nov.* 1814.

bors' waters. The British Government, however, avowed their just determination to withhold the forfeited privileges.* A convention subsequently entered into between the two powers to establish "reciprocal liberty of commerce,"† contained no reference to the fisheries, notwithstanding that early in the same year, American vessels were warned off the coast by British cruisers. Stimulated by a revival of fishing bounties with drawback allowances, and the prohibitory duties placed by Congress on all foreign caught fish, in 1816, United States fishing vessels swarmed anew over the colonial fisheries. They penetrated everywhere. Firm in the purpose of maintaining inviolate her territorial and maritime rights, Great Britain defended the fisheries of her colonial subjects. Twenty U. S. vessels were seized for trespass on the limits of her maritime jurisdiction. These prompt measures led American statesmen to see the folly of their exacting attitude in the recent peace negotiations, and overtures were made which facilitated an adjustment of disputes in the Convention of 1818.

## V.—FISHERY ARTICLE OF THE CONVENTION OF 1818.‡

"ART. I—Whereas differences have arisen respecting the liberty claimed by "the United States, for the inhabitants thereof to take, dry, and cure fish, on "certain coasts, bays, harbors, and creeks, of His Britannic Majesty's dominions in "America, it is agreed between the high Contracting Parties, that the inhabitants "of the said United States shall have, for ever, in common with the subjects of "His Britannic Majesty, the liberty to take fish of every kind, on that part of "the southern coast of Newfoundland, which extends from Cape Ray to the "Rameau Islands, on the western and northern coast of Newfoundland, from the "said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, "and also on the coasts, bays, harbors, and creeks, from Mount Joly,|| on the "southern coast of Labrador, to and through the Straits of Belleisle, and thence "northwardly indefinitely along the coast, without prejudice, however, to any of "the exclusive rights of the Hudson's Bay Company: and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors, and creeks, of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same,

* "Our citizens nevertheless proceeded as formerly, to fish off the British coasts, and to use the "unsettled shores for curing and drying fish, according to the stipulations of the former Treaty. "They were immediately warned off by the British Naval Forces, and some were captured."—*Andrews, p.* 56, *Washington*, 1851.

† *Signed at London, 3rd July*, 1815.

‡ *Signed at London, October* 20, 1818.

|| "Mount Joli, mentioned in all former remark books, has no existence; at least there is no mountain, nor even anything that deserves the name of a hill; but near the termination of the sandy cliffs which end at the south-west extremity of Natashquhan Point, the sandy ridges with spruce trees rise into a slight mound, or very little higher than the rest of the country. This is Mount Joli; but so little remarkable in its appearance that we should not have noticed it, had it not been for the name."—*Admiral Bayfield.*

This mount is about 11 miles east of, or below the Grand Natashquhan River. A line drawn on a course N. E. to the Island of Anticosti, strikes the centre of Prinsta Bay, on the northerly side of that island, near the elevated plateau and bluff called Table Head.

"or any portion thereof, shall be settled, it shall not be lawful for the said fishermen "to dry or cure fish at such portion so settled, without previous agreement for "such purpose, with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce for ever any liberty heretofore "enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or "within three marine miles, of any of the coasts, bays, creeks or harbors of His "Britannic Majesty's dominions in America, not included within the above men- "tioned limits; provided, however, that the American fishermen shall be admitted "to enter such bays or harbors, for the purpose of shelter and of repairing dam- "ages therein, of purchasing wood, and of obtaining water, and for no other "purpose whatever. But they shall be under such restrictions as may be neces- "sary to prevent their, taking, drying, or curing fish therein, or in any other "manner whatever abusing the privileges hereby reserved to them."*

## VI.—THE COMMON FISHERY RIGHTS OF NATIONS IN OPEN SEAS.

In order to a full and just understanding of points involved in this fishery dispute, it is essential to consider what are the rights of fishery in the high seas common to nations; also, what are exclusive rights of fishery in the sea, as expounded by public jurists and sanctioned by universal custom, pertaining to maritime sovereignty.

"The right of fishing in the open sea or main Ocean is common to all nations, "on the same principle which sanctions the common right of navigation, viz: that "he who fishes in the open sea does no injury to any one, and the products of the "seas are, in this respect inexhaustible and sufficient for all. It is possible indeed "that one nation may possess an exclusive right of navigation and fishing against "another nation, by virtue of treaty engagements, as it is competent for a nation "to renounce a portion of its rights; and there have been instances of such "renunciations both in ancient and modern times."—*Twiss' Law of Nations, p.* 253.

"The free use of the Ocean, for navigation and fishing, is common to all "mankind."—*Kent's Commentaries, p.* 25.

## VII.—EXCLUSIVE FISHERY RIGHTS OF NATIONS IN CERTAIN WATERS.

"The right of fishing in the waters adjacent to the coasts of any nation, "within its territorial limits, belongs exclusively to the subjects of the State."—*Wheaton's International Law, p.* 325.

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* *A complete collection of the Treaties and Conventions between Great Britain and Foreign Powers. By Lewis Hertslet, Esq., London*, 1840, *p.* 86.

This Convention was fulfilled by the Imperial Statute 59, Geo. III, Cap. 38. Because of its important bearing on the subject, and the general consonance of its provisions, the Act is copied *in extenso* as Appendix B.—*Ed.*

Although Great Britain was always so anxious for peace as to yield much to the importunate and clamorous demands of American negotiators on the fishery question, her policy has been ever prig ht and consistent. And this Act is in perfect keeping with such straight-forward policy.—*Ed.*

"Besides those, *bays*, *gulfs*, *straits*, mouths of rivers and estuaries *which are* "*enclosed by capes and headlands* belonging to the territory of the State, a juris- "diction and right of property over certain other portions of the sea have been "claimed by different nations, on the ground of immemorial use."—*Wheaton*, *p.* 326.

"The right of fishery in the *open sea* may be the exclusive right of a nation." *Twiss' Law of Nations*, *p.* 264. *Vide* Commentaries on American Law, by James Kent; Vol. 1, (6th edition,) New York, 1848. The Law of Nations: by Travers Twiss, D. C. L, London, 1861.

Early treaties between France and England, prove that a common right of fishing in the seas which divide the two kingdoms did not exist, and was therefore subject to treaty engagements. *

"In the case of portions of the sea, a nation may have a peculiar possession "of them, so as to exclude the universal or common use of them by other nations." —*Twiss' Law of Nations*, *p.* 252.

This dictum is peculiarly applicable to some parts of the North American seas.

In the United States, Fisheries and Oyster beds within the territorial limits of each state, are held by the highest authorities to be "the common property of "the citizens of that state;" and the citizens of another state have no claim to use them, nor can the United States exercise any authority over them in their natural state.†—*Angell on Tide Waters.*

"In treating of fishery in the sea, a distinction must be made between what "is properly called the open sea, and what may be called the territorial sea, or *Mare* "*Clausum*, i. e. the sea which is in a certain sense the property of the nation to "which the adjacent continent or island belongs, such sea being vested in the "crown, or in the sovereign authority as representing the nation. With regard "to the limit from the shore to which this right in the territorial sea extends, it "seems to be agreed by jurists that this limit is three miles (from low water mark). "And the same limit is fixed upon in the convention between Great Britain and "France which regulates the use of the fisheries between their respective shores: "the fishermen of each country having the exclusive right of fishing within three "miles from their own shore undisturbed by those of the other country. The "same limit is uniformly adopted by the Court of Admiralty in administering the "law with respect to the rules of the sea in British waters."—*Vattel*, 128. *Selden*, 182. *Martens*, 161.

## VIII.—THE TERRITORIAL AND MARITIME JURISDICTION OF NATIONS, INCLUSIVE OF SOLE RIGHTS OF FISHING.

"The maritime territory of every State extends to the ports, harbours, bays, "mouths of rivers *and adjacent parts of the sea inclosed by headlands*, belonging

* *Vide* Twiss' Law of Nations, p. 266.

† Art. 4, sec. 2, clause 1, Federal Constitution.

" to the same State. The general usage of nations *superadds to this extent* of " territorial jurisdiction a distance of a marine league,* or as far as a cannon shot " will reach from the shore, along all the coasts of the State. Within these " limits (i. e. the ports, harbours, bays, and mouths of rivers and adjacent parts " of the sea inclosed by headlands, with three marine miles superadded) its rights " of property and territorial jurisdiction are absolute, and exclude those of every " other nation."—*Elements of International Law, p.* 320, *By Henry Wheaton, LL. D. Second annotated edition by W. B. Lawrence, Boston*, 1864.

" The sea coast does not present one straight and regular line ; it is on the " contrary almost always intersected by bays, capes, &c. If the maritime domain " must always be measured from every one of these points of the shore, great in- " conveniences would result from it. It has, therefore, been agreed in practice to " draw an imaginary line from one promontory to another, and to take this line, " as the point of departure for the reach of the cannon."—*Hautefeuille, Droits des Nations, p.* 89.

" The exclusive territorial jurisdiction of the British Crown over the inclosed " parts of the Sea along the Coasts of the Island of Great Britain, has immemorially " extended to those bays called the King's Chambers ; that is portions of the sea " cut off by lines drawn from one promontory to another. *A similar jurisdiction* " *is also asserted by the United States over the Delaware Bay and other Bays and* " *Estuaries forming portions of their territory.*"—*Bynkershoek, p.* 323, *of Law- rence's Wheaton.*

" Navigable rivers which flow through a territory, and the sea coast adjoining " it, and the navigable waters included in bays, and between headlands and arms of " the sea, belong to the Sovereign of the adjoining territory, as being necessary " to the safety of the nation, *and to the undisturbed use of the neighbouring* " *shores.*"—*Kent's Commentaries, p.* 25.

" The property and dominion of the *sea*, might belong to him who is in " possession of the lands on both sides, *though it be open above as a gulf, or above* " *and below as a strait*, provided it be not so great a part of the sea, as when com- " pared with the lands on both sides, it cannot be supposed to be a portion of " them."—*Grotius de jure belli et pacis L.* 11.

" The exclusive right of domain, and territorial jurisdiction of the British " Crown, have immemorially extended to the bays or portions of the sea cut off by " lines drawn from one promontory to another, along the coasts of the island of " Great Britain. They are commonly called the King's Chambers. *A similar* " *jurisdiction, or right of domain, is also asserted by the United States over the* " *Delaware Bay, and other bays and estuaries, as forming portions of their territory.* " Other nations have claimed a right of territory over bays, gulfs, straits, mouths

* The mean nautical mile is 2025 yards. A marine league is 6075 yards, or a fraction over 3½ statute miles.

" of rivers, and estuaries which are enclosed by capes and headlands along their " respective coasts, *and the principle would seem to be pretty well established as a " rule of International law."—International Law, By H. W. Halleck, A. M., San Francisco*, 1861.

" Gulfs and Channels or arms of the sea are, according to the regular course, " supposed to belong to the people with whose lands they are encompassed."—*Puffendorf Law of Nature and of Nations, L IV.*

" All we have said of the parts of the sea near the coast, may be said more particularly, and with greater reason, of roads, bays, and straits, as still more capable of being possessed, and of greater importance to the safety of the country. But I speak of bays and straits of small extent, not of those great tracts of sea to which these names are sometimes given, as Hudson's Bay and the Straits of Magellan, over which the empire cannot extend, still less a right of property."—*The Law of Nations, By Mons. de Vattel, New Edition by Jos. Chitty, Esq., Annotated by C. D. Ingraham, Esq., Philadelphia*, 1858.

" According to the current of modern authority, the general *territorial juris-" diction* extends into the sea as far as cannon shot will reach,* and no further, " and this is generally calculated to be a marine league."—*Kent's Commentaries p.* 29.

" Considering the great extent of the line of the American coasts, we have a " right to claim, *for fiscal* and defensive regulations, a liberal extension of maritime " jurisdiction ; and it would not be unreasonable, as I apprehend, to assume, for " domestic purposes connected with our safety and *welfare*, the control of the " waters on our coasts, though included within lines stretching from quite distant " headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket " to Mauntauck Point, and from that point to the Capes of the Delaware, and " from the South of Cape Florida to the Mississippi."—*Kent's Commentaries, pp.* 29 *and* 30.

" It is difficult to draw any precise or determinate conclusion, amidst the " variety of opinions, as to the distance to which a state may lawfully extend its " exclusive dominion over the sea adjoining its territories, and beyond those por-" tions of the sea which are embraced by harbors, gulfs, bays, and estuaries, " *and over which its jurisdiction unquestionably extends.* All that can be reason-" ably asserted is, that the dominion of the sovereign of the shore over the con-" tiguous sea, extends as far as is requisite for his safety, *and for some lawful " end."—Kent's Commentaries, p.* 29.

The preceding dicta should be borne in mind, with especial reference to the plea set up by American ministers that the limit of maritime jurisdiction claimed by Chancellor Kent is with respect to " belligerent purposes ;" and that the prin-

* " The distance that a cannon shot will reach has been increased in a remarkable degree by " modern inventions ; and consequently the Sovereignty over the coast may be deemed to be proportionally extended."—*Organ of the Russian Government, Le Nord, 11th June*, 1861.

ciple of drawing lines from distant headlands does not sanction such a definition of marine bounds as affecting territorial jurisdiction and piscary. Is not fishery a "lawful end," and are not the fishing pursuits of citizens "purposes connected "with our safety and welfare?"

For purely belligerent purposes Great Britain takes sixteen miles of outside sea as the limit, and the United States take much more, both estimating the distance "from a right line drawn from one headland to another."*

## IX.—THE CONVENTION OF 1818 AS RELATING TO ACQUIRED RIGHT AND CONCURRENT LIBERTY OF UNITED STATES CITIZENS.

This convention left the "right" of Americans precisely as it had existed under the treaty of 1783, to take fish at all places "*in the sea*" common to both nations. But, while curtailing the "liberty"† formerly allowed in respect of taking fish inshore, it enhanced facilities for curing. Under the former compact they could fish in the chief places about Newfoundland, but could not use the shores; they might catch and cure fish generally on the coasts, bays, and creeks of the mainland and Magdalen Islands, provided that where settled the consent of the residents should be obtained for landing and curing‡ Under the latter agreement they could both take and cure fish on certain parts of Newfoundland, and a limited extent of Labrador, subject only to permission for drying conveniences from the settlers where the coasts should be inhabited; but the liberty of fishing and curing on the coasts, bays and creeks of Nova Scotia and that part of Labrador south-west of Mount Joly, near Natashquhan River, and almost opposite to the east end of the Island of Anticosti, was altogether withheld.|| And, as if the more emphatically to mark their acquiescence in the rightful exercise of the power and authority of Great Britain to withhold so much of the liberty as had given rise to "differences" named in the preamble, the United States voluntarily§ renounced

* Chancellor Kent, p. 30.
Mr. Jefferson, in 1793.
Mr. Madison, in 1806.

† "The liberty claimed (under the treaty of 1783) by the United States in respect to the fishery "within the British jurisdiction and territory, was confined to certain geographical limits." *Wheaton, p.* 471.

‡ "In the 3rd article of the treaty of 1783, Great Britain acknowledged the *right* of the U. S. to "take fish on the Banks of Newfoundland and other places from which Great Britain had no right to "exclude any independent nation. But they were to have the *liberty* to cure and dry them in certain "unsettled places within the British territory. If the liberties thus granted were to be as perpetual "and indefeasible as the rights previously recognized, it was difficult to conceive that the American "plenipotentiaries would have admitted so strange a restriction of a perpetual and indefeasible right as "that with which the article concludes, which left a right so practical and so beneficial as this was "admitted to be, dependent on the will of British subjects, proprietors or possessors of the soil, to "prohibit its exercise altogether." *Diplomatic Cor. Lord Bathurst's Despatch, Oct.* 30, 1815.

|| "Great Britain had always considered the liberty formerly enjoyed by the United States, of "fishing within British limits and using British territory as derived from the 3rd article of the treaty "of 1783, and from that alone; and that the claim of any independent state to occupy, and use, at "its discretion, any portion of the territory of another, without compensation or corresponding indul-"gence, could not rest on any other foundation than conventional stipulation." *Diplomatic Cor. Lord Bathurst's Despatch, Oct.* 30, 1815.

§ "We inserted the clause of renunciation. The British plenipotentiaries did not desire it." *Negotiations of American Minister*, 1818. *Rush's Productions, p.* 290.

for ever any freedom before "enjoyed or claimed," to take, dry or cure fish on or within three marine miles of any other portions of the coasts, bays, creeks or harbors of British America.*

In so far as the British claim is concerned, this formal renunciation appears to have been quite unnecessary. Mr. Webster refers to it as being "an oversight in the convention of 1818, to make so large a concession to England."†

The American negotiators were accused of having given up "fishing rights of long existence and great magnitude."

It is difficult to perceive in what sense the United States can be said to have made a "concession" to Great Britain. Without any such clause, Americans, as foreigners, would be excluded from those waters and coasts within imperial and provincial jurisdiction. Three miles, at least, they were bound to keep off, whether they chose to renounce a "claim" to do otherwise or not. They might dispute the basis of exclusion, and pervert the ruling and practice of nations to a narrower significance than themselves or any other powers have assigned to the limits of maritime states; but that (and through an oversight) there was any *concession* to Great Britain, is simply impossible.

The only question, therefore, that can arise out of the terms of this convention is, as to the general definition of marine limits applied to bays of a spacious character or peculiar configuration.

## X—DEFINITION OF BAYS AND INDENTS OF SEA COASTS, WITH RESPECT TO MARITIME CONTROL AND EXCLUSIVE RIGHTS OF FISHERY.

Authorities cited at pages 11 to 15 clearly establish the *fauces terræ* to be bases of the bounds of national jurisdiction. These citations also prove the European principle to have been adopted (and even freely applied) by American publicists. As between the federal and state Governments of the American union, local and common rights of usufructuary privileges in the coast waters are governed by a very free extension of old world principles.

* "When the U. S., by the treaty of 1818, solemnly renounced for ever the right to fish within "three miles of the coasts, bays, creeks or harbors of certain portions of North America, the stipula- "tion was neither extraordinary nor extravagant. It is matter of common history that sea girt-nations "claim peculiar rights within a league of their shores; and equally plain that according to the "maxims of international law, this claim is defined by lines drawn not only between the formation "of bays, but from the headlands of indentations of the coasts." *Memorial to Her Majesty, Sept. 2nd* 1852.

† "It would appear that by a strict and rigid construction of this article, fishing vessels of "the United States are precluded from entering into the bays or harbors of the British provinces, "except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, "as is usually understood, is an arm or recess of the sea entering from the ocean between capes "or headlands; and the term is applied equally to small and large tracts of water thus situated. "It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large "tracts of water.

"The British authorities insist that England has a right to draw a line from headland to head- "land, and to capture all American fishermen who may follow their pursuits inside of that line. It "was undoubtedly an oversight in the Convention of 1818, to make so large a concession to England, "since the United States had usually considered that those vast inlets or recesses of the ocean ought to "be open to American fishermen, as freely as the sea itself, to within three marine miles of the shore." *Mr. Secretary Webster, 6th July*, 1852.

The federal authority has no power to regulate rights of piscary on the coasts of any state, nor to cede by treaty, or otherwise, the privileges of using fisheries to a foreign power. The local jurisdiction goes still further: each state defines piscarial rights as belonging to its inhabitants. Within certain limits all fishery privileges are held for the exclusive benefit of citizens of the state. The limits which constitute state piscary are the same as laid down by the Law of Nations.* And three marine miles in cases of bays and arms of the sea, and even oyster beds outside, are measured from headland to headland.† It would be surprising, therefore, if a sovereign power might not apply to foreigners a definition which respective states composing a confederacy maintain in relation to their own federal government.

It is contended in all American state papers on the fishery question, that the Bay of Fundy, in New Brunswick and Nova Scotia, and the Bay of Chaleur, in Canada and New Brunswick, are of such exceptional character as to render them part of the common sea, and in respect of fisheries, not susceptible of definition as jurisdictional waters.

These two bays may be taken as criteria.

Mr. Lawrence, in his annotated edition of Wheaton's International Law (p. 326), presses into service the words ("small bays") used by Hautefeuille in defining maritime rights. Upon referring to this standard authority, the language is found to bear no such interpretation as accords with the American view that the Bays of Fundy and Chaleur are not bays definable by headland lines. The French author's words are: "This mode adopted by almost all nations, is only applicable to *small bays*‡ and not to Gulfs‖ of a great extent, as the *Gulf of Gascony*, or the *Gulf* " *of Lyons*, which are in reality great parts of the completely open sea, and of " which it is impossible to deny the complete assimilation with the great Ocean."§

* *Wheaton, page* 320.

† *Schulte's Aquatic Rights.*
*Chancellor Kent.*
*Angell on Tide Waters.*
*Wait's American State Papers.*
*Attorney General of the United States, 14th May,* 1793.
*Award of Joint Commission under the Reciprocity Treaty,* 1854.

‡ " An arm extending into the land not of any definite form, but smaller than a Gulf and larger " than a Creek. The name, however, is not used with much precision, and is often applied to large " tracts of water, around which the land forms a curve, as Hudson's Bay. Nor is the name restricted " to tracts of water with a narrow entrance, but used for any recess or inlet between capes or head- " lands, as the Bay of Biscay." *Webster's Dictionary, word Bay.*

‖ " A recess in the Ocean from the general line of the shore into the land, or a tract of water " extending from the Ocean, or a Sea, into the land between two points or promontories; a large " Bay, as the Gulf of Mexico, the Gulf of Venice, the Gulf of Finland. A Gulf and Bay differ only " in extent. We apply bay to a large or small recess of the sea, as the Bay of Biscay, the Bay of " Fundy; but Gulf is applied only to a large extent of water." *Webster's Dictionary, word Gulf.*

" A Bay, as is usually understood, is an arm or recess of the sea, entering from the Ocean be- " tween capes or headlands; and the term is applied equally to small and large tracts of water thus " situated. It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very " large tracts of water." *Mr. Secretary Webster.*

" A Gulf and a Bay differ only in extent, we apply Bays to a large or small recess of the sea, as " the Bay of Biscay, the Bay of Fundy; but Gulf is applied only to a large extent of water." *Imperial Dictionary, word Bay.*

§ *Droits des Nations Neutres, 2me. édition tom.* 1, *p.* 89.

These examples are rather favorable to our view than against it. No one can compare the Bays of Fundy and Chaleur with the Gulfs of Gascony and Lyons, without being convinced that they are comparatively "small bays," forming no part of open sea. In fact, the Bay of Chaleur is a bay within a gulf—the Gulf of St. Lawrence intervening between its entrance and the open sea ;* and both of them are closed on three sides by land (British soil) quite inside of the great Ocean.

The width of the Bay of Fundy enters largely into American arguments. Mr. Everett, in his despatch of 25th May, 1844, speaks of the distance across the mouth as sixty miles, and argues therefrom against the claim to embrace its waters within British jurisdiction. Under article 3 of the treaty of Ghent,† Commissioners were appointed to determine the provincial boundaries in that part of the Bay of Fundy. Their decision placed the boundary along the midchannel, inside of Campo Bello, between Grand Manan Island and the coast of Maine. It would, therefore, be outside of this island and from furthest land that measurement should be made. From the light on Gannet Rock to that on Bryce's Island is about 30 miles ; but if measured to Beatson's Ledges, the distance is somewhat less. Wheaton, on Rights of Property, page 321, says : "the term 'coasts' "includes the natural appendages of the territory which rise out of the water, "altho' those islands are not of sufficient firmness to be inhabited or fortified."‡

Then, as regards the Bay of Chaleur,‖ its full width does not exceed 15 miles, merely double the width of the mouth of the Potomac River, according to Brooke's United States Gazetteer ; and its greatest depth is less than 80 miles. If it was possible to doubt the right of control over these bays on the ground of their spacious character, a reference to the relative sizes of the United States' bays must settle the doubt. Delaware Bay, which Chancellor Kent considers to be

* Campeachy Bay, in the Gulf of Mexico, might as justly be reckoned part of the North Atlantic. So also is Panama Bay cut off from the sea by the Gulf of Panama. But the difference in position and degree can be readily understood, which, while it renders the Bay of Bengal for example, distinguishable from the Indian Sea, assimilates the Bay of Tehuantepec to the Pacific Ocean. The "Schelds" of Zetland form no part of the North Sea. The Gulfs of Finland and Riga are different only in degree from the Gulf of Bothnia. Over the first named, Russia exercises exclusive sway, although both are much more susceptible of being regarded as part of the Baltic Sea, than the Bay of Fundy as part of the Atlantic Ocean. The Northern Pacific is a "great ocean" (Art. 1, Convention between United States and Russia 5th April 1824), yet Russia claims and exercises exclusive jurisdiction there notwithstanding American and British remonstrances. She has quite recently turned the American whalers out of the Southern Pacific.—*Ed.*

† "And whereas the several Islands in the Bay of Passamaquoddy, which is part of the Bay of "Fundy, and the Island of Grand Manan in the said Bay of Fundy, are claimed by the United States, &c."—*Article* 3, *Treaty of Ghent.*

‡ "Whether they were composed of earth or solid rock, would not vary the right of dominion, "for the right of dominion does not depend upon the texture of the soil."—*Robinson's Amer. Rep.*, *vol.* 5, *p.* 385.

The little mud banks off the mouth of the Mississippi, are decided to be "shores of American "territory."—*Wheaton*, *p.* 321.

‖ "The magnificent Bay of Chaleur is the largest in the Gulf St. Lawrence, being 25 miles wide "on a S. W. ½ S. line across its entrance, from Cape Despair to Miscou Island ; but the entrance is "more generally considered to be at Point Maquereau, from which the North-point of Miscou Island "bears S. S. E. 14½ miles. The depth of the bay from Miscou to the entrance of the Restigouche "River, is about 75 miles, and its circumference, reckoning from Cape Despair round to Miscou, is 185 "miles."—*Adml. Bayfield.*

wholly within the "territorial jurisdiction" * of the United States, is 20 miles wide at the entrance, 30 miles across inside the mouth, and 70 miles long. Each of the States of New Jersey and Delaware exercises exclusive state authority to the centre of the bay, and for three nautical miles seawards from Capes May and Henlopen.†

Chesapeake Bay is narrower, being about 12 miles wide at the entrance, but it expands into the largest arm of the sea in the Union, being 270 miles in length. It is famous for its extensive and lucrative fisheries, which are not only closed to foreigners, but are exclusively controlled by the citizens of the bordering states; and the state rule of Maryland extends for three marine miles outside of Capes Charles and Henry and the islands and bars along the coast.‡

Massachusetts Bay|| is defined by lines drawn between the headlands of Cape Cod and Cape Ann, distant over 50 marine miles apart. Cape Cod Bay, within this limit, is itself about 20 miles wide from the Point to Plymouth Harbor. Let any unprejudiced person compare, on a chart, the situation of Massachusetts Bay with that of Fundy or Chaleur, and declare which is most plainly distinguishable from the open sea.

## XI.—CONSTRUCTION OF THE CONVENTION OF 1818.

There remains but one point in this dispute to be now examined: whether the generally accepted definition of bays, &c., as embraced within territorial control, or a special limitation of customary bounds be applicable to the fishery article of the Convention of 1818.§

Mr. Secretary Webster, 6th July, 1852, says; "It would appear by a *strict* "and *rigid construction* of this article, fishing vessels of the United States are "precluded from entering into the bays or harbors of the British Provinces, ex- "cept for the purposes of shelter, repairing damages and obtaining wood and "water." Mr. (now Secretary) Seward, 14th August, 1852, describes this construction as forced and unjust. Mr. Secretary Marcy, 6th July 1853, also pro-

* *Kent's Commentaries.*

† *Angell on Tide Waters.*

Why should not Nova Scotia and New Brunswick on either side of the Bay of Fundy, and Canada and New Brunswick on either side of the Bay of Chaleur, be entitled to similar jurisdiction ?— *Ed.*

‡ *Angell on Wrecks. Wildman's Int. Law.*

|| "Massachusetts Bay, which gives its name to the State, extends between Cape Ann, "which projects sea-ward about 18 miles on the North, and Cape Cod on the South. It is about 70 "miles in length and comprises Boston Bay and Cape Cod Bay. On the southern coast is Buzzard "Bay, about 30 miles in length, and comprising a large number of fine and secure harbors."—*United States Gazetteer.*

§ "Discussions as to the interpretation of the provisions respecting the fisheries in the treaty of 1818, go back as far as 1823, and Mr. Forsyth, in instructing Mr. Stephenson, Minister at London, February 20th 1841, states as the point of difference, that the provincial authorities assume a right to exclude American vessels from all their bays, including the Bays of Fundy and Chaleur, and to prohibit their approach within three miles of a line drawn from headland to headland, while the American fishermen believe they have a right to take fish anywhere within 3 miles of land."—*Mr. Lawrence,( Wheaton, p.* 325).

"No United States fisherman has under the Convention (1818), the right to fish within 3 miles "of the entrance of such bays as are designated by a line drawn from headland to headland at their "entrance."—*Lord Aberdeen's despatch to Mr. Everett, 10th March,* 1845.

nounces it strained. American ministers have argued elaborately against such a construction as being never contemplated, as inconsistent with the object and intent and not justified by the phraseology of the convention. They claim an equitable construction, "since the United States had usually considered that those vast "inlets or recesses of the ocean ought to be open to American fishermen as freely "as the sea itself to within three marine miles of the shore."

It is laid down in Vattel, * that, "in the interpretation of Treaties, compacts "and promises, we ought not to deviate from the common use of the language, "unless we have very strong reasons for it."

The terms in which a common liberty to fish is couched, describe the coasts, bays, &c., as in the clause of renunciation. Those excepted coasts, bays, &c., were not to be used "on or within three marine miles." That such distance was not to be reckoned from the *ripa* is clear enough, because it was precisely on account of United States fishermen having fished within the entrances of the bays of Fundy and Chaleur, † and other large indents, that the "differences" referred to in the preamble had arisen. All of the preceding negotiations had aimed at the same liberty. If anything less than the reservation of principal bays, &c.,‡ had been meant, there was no necessity for specifying these indentations,—a general designation of "coasts" would have been sufficient. In this word might seem to be comprehended all that Americans claimed but were denied in 1814, and again claimed (but failing to secure renounced) in 1818.||

The Imperial Statute of the 14th June, 1819, confirming the convention of the previous year, was a public Act on the part of Great Britain quite in accord with the sense of the Convention,|| But so long as its provisions were not rigorously enforced, United States fishermen raised no question. And it was only when the Provinces employed vessels to guard their own waters that United States fishermen found any inconvenience from the convention, and American statesmen discovered the British construction of it to be strict and rigid.

## XII.—ARE AMERICANS ENTITLED UNDER THE CONVENTION OF 1818 TO FISH AT AND LAND ON THE MAGDALEN ISLANDS?

Under the third article of the treaty of 1783, United States fishermen had liberty to dry and cure (but not to catch) fish in the unsettled bays, harbors and creeks of Magdalen Islands; but so soon as any of those places should become

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* *Book* 2, *Cap.* 17, *sec.* 271.

† The idea of Americans being entitled to fish in the Bay of Chaleur, where for forty years before they ever visited it, the fisheries were preoccupied, is most preposterous.—*Ed.*

‡There is nothing in the Convention to justify any distinction between "outer" and "inner" bays, between "large indents" and "small inlets." By the first part of the article certain coasts, bays, &c., are made common to the subjects of both nations; and in the second part, United States citizens are excluded from certain coasts and bays. In both the word bays means the same. No qualification of the term is anywhere expressed or implied.—*Ed.*

|| "When we evidently see what is the sense that agrees with the intention of the contracting "parties, it is not allowable to wrest their words to a contrary meaning."—*Vattel, lib. II, p.* 284.

settled, the consent of the inhabitants, proprietors or possessors of the ground must first be obtained before curing or drying fish at such settlements. The first article of the convention of 1818 did not renew this liberty, but conveyed an express privilege of fishing only *on the shores* of Magdalen Islands.

Herring and mackerel are fished for here close inshore, the former mainly with seines.

Americans contend that by previous use under the treaty of 1783, and because these beaches are necessary to enjoyment of the liberty conveyed, they are entitled to use the seine grounds at different parts of the Islands for hauling and drying their nets. They claim this privilege as implied in the specific freedom described, without which the principal liberty would be nugatory.

In "Angell on Tide waters," * an American authority, in defininig "shore," "high water mark," &c., it is laid down, that, in legal construction at both common and civil law, "the sea shore is that space of land which is alternately covered "and left dry, by the rising and falling of the tide. In other words, it is the "space which is between the high and low water marks, variously denominated "'shore,' 'strand,' and 'beach.'" The Supreme Court of the United States has always upheld the same definition: "The sea shore must be understood to be the "margin of the sea, in its usual and ordinary state; and when the sea is full, the "margin is high water mark. The sea shore is therefore the ground between the "ordinary high water mark and low water mark."†

If Americans are restricted to this definition of the word "shores" used in the convention, it is tantamount to a denial of fishery at the Magdalen Islands. Fishermen must use the land and sand bars above high water mark. And to deny United States citizens all access whatsoever even to these beaches would be perfectly consistent and just. In order to establish that the distinction made between these and other fishing grounds, meant precisely what the words of the convention express, it is sufficient to refer to the facts.‡

The liberty to take, dry, and cure fish at Magdalen Islands, enjoyed by virtue of the treaty of 1783, was subject to restriction in its extent and duration by the progress of settlement. In 1763, there were about 70 settlers in possession of the soil and carrying on the shore fisheries. The Islands were surveyed and deeded in 1798, at which time the settlements had increased to about 600 inhabitants. These settlers were located around the chief fishing stations, and had thus preoccupied most of the available shores and upland. At the time of the convention,

* *A treatise on the right of property in Tide waters and in the soil and shores thereof by Jos. K. Angell, Boston*, 1857. *Vide Cap. III.*

† 6. *Mass. R.* 435. 1. *Pick (Mass) R.* 180.

‡ Attempts have been made to show that in adopting the term "coasts" where liberty to take, dry and cure fish was granted, and the words "on the shores of the Magdalen Islands" to convey the privilege of merely taking fish, there was a specific use of terms applicable to the different nature and requirements of the respective fishings. And that here it was intended the principal liberty should draw after it the incidental use of means (such as landing) necessary to its enjoyment. Such is not the case. It is quite clear that, if the term "coasts" had not been used in describing the privilege conceded at these Islands, Americans would have been precluded from fishing in the bays and along the shores.—*Ed.*

in 1818, the population consisted of some 1300 souls. Every inch of the best fishing ground was at this date in the use and occupation of British subjects. Moreover, these settlers were the tenants of a grantee of the Crown, who held the Islands by peculiar title. The grant of 24th April, 1798, to Isaac Coffin, conveyed "*the beaches and shores* of the said premises," and "in the sea in the "vicinity of the said premises so granted, to fish for, catch, take and destroy all "fish of the sea, whatsoever, and all sea animals of whatsoever description, &c." The terms of such grant, even without existing settlement, must have early precluded Americans from using the shores. They never made any agreement with the inhabitants, proprietors, or possessors of the soil under the treaty of 1783, and it is well known that the defenceless position of the settlers was such that there was no choice between tacit permission and forcible usage. If there could be any doubt as regards the supervention of conditions which justified exclusion, the reservation made by the Letters Patent on behalf of "good and faitful subjects" of Great Britain, "employed in fishing in the vicinity of the said premises," to be permitted free ingress and egress, must prove that a private property was constituted over which foreigners could no longer exercise any common privilege. It therefore quite accords with the actual circumstances that the conditional liberty allowed under the former treaty should be withdrawn in form, as already it was in fact; and the privilege to take fish around the shores was given by the convention without any possibility of an incidental addition altogether inconsistent with the tenor of the instrument and subversive of proprietary rights.*

The conclusion that Americans cannot claim to land on or fish from the shores of the Magdalen Islands, is fortified by high legal authority.† Notwithstanding the clear exclusion which these facts would sustain, Americans have been always suffered to enjoy the fisheries at Magdalen Islands. Their vessels to the number of from 150 to 200 every season frequent the bays and harbors, and hundreds of their fishermen fish from the Islands. This indicates the neighborly conduct of Canadians towards them. But there is a still stronger evidence of the extreme liberality of Canada. Even under the treaty of 1854, United States citizens could have been refused the use of these Islands,‡ on the several grounds of private

* "The subjects of each state shall not be disturbed in their fishing." *Haggard's Adm. Rep. vol. III, pp.* 275, 290.—*Wheaton, p.* 321, *Ed. note.*

† Opinion of Law Officers of the Crown, 30th August, 1841. *At Appendices C and D.*

‡ "With permission to land upon the coasts and shores of those Colonies, and the Islands thereof "and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish, pro- "vided that in so doing they do not interfere with the rights of private property or with the British "fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose." —*Article I. Reciprocity Treaty*, 1854.

"Depredations by foreign fishermen on the coasts of that isolated group (Magdalen Islands) are "of common occurrence. * * * While I was at Amherst harbor a very serious affray took place "on shore among American fishermen. Pistols were fired. The peaceable inhabitants were in dismay, "and dared not go out of their houses. * * Among the large numbers of strange fishermen re- "sorting there must always be found lawless characters, to whom violence is a favorite pastime. The "masters on board whose vessels they are have no control over them. * * Our quiet fishermen and "settlers suffer frequent injury and insult, their houses are sometimes invaded, and their fishing often "impeded."—*Extracts from report of P. Fortin, Esq.*

proprietorship, pre-occupation, and there being no liberty of *landing to fish* provided for. Strictly speaking, they might also under the convention of 1818, be in future refused access to the now settled parts of Labrador, where their best fares in that region are taken.

## APPENDIX A.

### Instructions from the British Government to the Governor of Newfoundland, relative to the Privileges enjoyed by Citizens of the United States to fish within British Jurisdiction. London 17th June, 1815.

DOWNING STREET, 17th June, 1815.

SIR,

As the Treaty of Peace lately concluded with the United States contains no provisions with respect to the Fisheries, which the Subjects of the United States enjoyed under the III Article of the Peace of 1783, His Majesty's Government consider it not unnecessary, that you should be informed as to the extent to which those privileges are affected, by the omission of any stipulation in the present Treaty, and of the line of conduct which it is in consequence advisable for you to adopt.

You cannot but be aware, that the III Article of the Treaty of Peace of 1783, contained two distinct stipulations, the one recognizing the Rights which the United States had to take Fish upon the high seas, and the other granting to the United States the privilege of Fishing within the British Jurisdiction, and of using under certain conditions, the Shores and Territory of His Majesty for purposes connected with the Fishery: of these, the former being considered permanent, cannot be altered or affected by any change of the relative situation of the two Countries, but the other being a privilege derived from the Treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the Treaty itself. On the declaration of War by the American Government and the consequent abrogation of the then existing Treaties, the United States forfeited with respect to the Fisheries, those privileges which are purely Conventional, and (as they have not been renewed by stipulation in the present Treaty) the subjects of the

United States can have no pretence to any Right to fish within the British Jurisdiction, or to use the British Territory for purposes connected with the Fishery.

Such being the view taken of the question of the Fisheries, as far as relates to the United States, I am commanded by His Royal Highness the Prince Regent, to instruct you to abstain most carefully from any interference with the Fishery, in which the Subjects of the United States may be engaged either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the Sea. At the same time you will prevent them, except under the circumstances hereinafter mentioned, from using the British Territory for purposes connected with the Fishery, and will exclude their fishing vessels from the Bays, Harbours, Rivers, Creeks and Inlets of all His Majesty's Possessions. In case, however, it should have happened that the Fishermen of the United States, through ignorance of the circumstances which affect this question, should previous to your arrival, have already commenced a Fishery similar to that carried on by them previous to the late War, and should have occupied the British Harbours, and formed Establishments on the British Territory, which could not be suddenly abandoned without very considerable loss; His Royal Highness the Prince Regent, willing to give every indulgence to the Citizens of the United States which is compatible with His Majesty's Rights, has commanded me to instruct you to abstain from molesting such Fishermen, or impeding the progress of their Fishing during the present year, unless they should, by attempts to carry on a contraband trade, render themselves unworthy of protection or indulgence: you will, however, not fail to communicate to them the tenor of the Instructions which you have received, and the view which His Majesty's Government take of the question of the Fishery, and you will above all be careful to explain to them that they are not in any future season to expect a continuance of the same indulgence.

I have, &c.,

Vice Admiral Sir Richard G. Keats. BATHURST.

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## APPENDIX B.

### Imperial Act 59 Geo. III, Cap. 38.

An Act to enable His Majesty to make Regulations with respect to the taking and curing Fish on certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America. (14th June, 1819.)

WHEREAS a Convention between His Majesty and the United States of America, was made and signed at *London*, on the Twentieth day of *Octo-*

*ber* one thousand eight hundred and eighteen; and by the first article of the said Convention, reciting that Differences had arisen respecting the Liberty claimed by the United States for the Inhabitants thereof to take, dry and cure Fish in certain Coasts, Bays, Harbors and Creeks of His *Britannic* Majesty's Dominions in *America*, it is agreed that the inhabitants of the said United States shall have for ever in common with the Subjects of His *Britannic* Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of *Newfoundland* which extends from *Cape Ray* to the *Rameau* Islands, on the Western and Northern Coasts of *Newfoundland*, from the said *Cape Ray* to the *Quirpon* Islands, on the shores of the *Magdalen* Islands, and also on the Coasts, Bays, Harbours and Creeks from *Mount Joly* on the Southern Coasts of Labrador, to and through the straits of Belleisle, and thence Northwardly indefinitely along the Coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also by the said Article of the said Convention agreed, that the American Fishermen should have liberty for ever to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of the Southern part of the Coast of Newfoundland above described, and of the Coast of Labrador, but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said Fishermen to dry or cure Fish at such portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors or Possessors of the Ground:—And whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make Regulations for that purpose;

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for His Majesty by and with the advice of His Majesty's Privy Council, by any Order or Orders in Council, to be from time to time made for that purpose, to make such Regulations, and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said Convention, with relation to the taking, drying and curing of Fish by Inhabitants of the United States of America, in common with British Subjects, within the Limits set forth in the said Article of the said Convention, and hereinbefore recited; Any Act or Acts of Parliament, or any Law, Custom or Usage to the contrary in anywise notwithstanding.

II. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any Person or Persons, not being a natural born Subject of

His Majesty, in any Foreign Ship, Vessel or Boat, nor for any person in any Ship, Vessel or Boat other than such as shall be navigated according to the Laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry or cure any Fish of any kind whatever, within three marine miles of any Coasts, Bays, Creeks or Harbours whatever, in any part of His Majesty's Dominions in America, not included within the limits specified and described in the First Article of said Convention, and hereinbefore recited; and that if any such Foreign Ship, Vessel or Boat or any Persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish within such distance of such Coasts, Bays, Creeks or Harbours within such parts of His Majesty's Dominions in America out of the said limits as aforesaid, all such Ships, Vessels, and Boats, together with their cargoes, and all Guns, Ammunition, Tackle, Apparel, Furniture and Stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like Ways, Means and Methods and in the same Courts, as Ships, Vessels or Boats may be forfeited, seized, prosecuted and condemned for any offence against any Laws relating to the Revenue of Customs, or the Laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain or of the United Kingdom of Great Britain and Ireland; Provided that nothing in this Act contained shall apply, or be constructed to apply to the Ships or Subjects of any Prince, Power or State in Amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying or curing Fish on the Coasts, Bays, Creeks or Harbours, or within the limits in this Act described.

III. Provided always, and be it enacted, That it shall and may be lawful for any Fisherman of the said United States to enter into any such Bays or Harbours of His Britannic Majesty's Dominions in America, as are last mentioned, for the purpose of shelter and repairing Damages therein, and of purchasing Wood and of obtaining Water, and for no other purpose whatever; subject nevertheless to such Restrictions as may be necessary to prevent such Fishermen of the said United States from taking, drying or curing Fish in the said Bays or Harbours, or in any other manner whatever abusing the said Privileges by the said Treaty and this Act reserved to them, and as shall for that Purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the Authority of this Act, and by any Regulations which shall be issued by the Governor or Person exercising the office of Governor in any such Parts of His Majesty's Dominions in America, under or in pursuance of any such Order in Council as aforesaid.

IV. And be it further enacted, that if any Person or Persons, upon Requisition made by the Governor of Newfoundland, or the Person exercising the Office of Governor, or by any Governor or Person exercising the Office of Governor in any other Parts of His Majesty's Dominions in America as aforesaid, or by any Officer or Officers acting under such Governor or Person exercising the Office of

Governor, in the execution of any Orders or Instructions from His Majesty in Council, shall refuse to depart from such Bays or Harbours; or if any Person or Persons shall refuse or neglect to conform to any Regulations or Directions which shall be made or given for the execution of any of the purposes of this Act; every such Person so refusing or otherwise offending against this Act shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or settlement within or near to which such offence shall be committed, or by Bill, Plaint or Information in any of His Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, His Heirs and Successors, and the other moiety to such Person or Persons as shall sue or prosecute for the same;—Provided always that any such suit or Prosecution, if the same be committed in Newfoundland, or in any other Colony or Settlement, shall be commenced within Three Calendar Months; and, if commenced in any of His Majesty's Courts at Westminster, within Twelve Calendar Months from the time of the Commission of such Offence.

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## APPENDIX C.

### Questions proposed by the House of Assembly of Nova Scotia, for consideration of Her Majesty's Legal Advisers; 8th June, 1841:—

I. Whether the Treaty of 1783 was annulled by the War of 1812, and whether citizens of the United States possess any right of fishery in the Waters of the lower provinces other than ceded to them by the convention of 1818; and if so, what right?

II. Have American citizens the right, under that convention to enter any of the Bays of this Province to take fish, if, after they have so entered, they prosecute the fishery more than three marine miles from the shores of such bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?

III. Is the distance of three marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands, and what is to be considered a headland?

IV. Have American vessels, fitted out for a fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed

limits, or to anchor there, or to fish there; and is casting bait to lure fish in the track of the vessel fishing, within the meaning of the convention?

V. Have American citizens a right to land on the Magdalen Islands, and conduct the fishery from the shores thereof, by using nets and seines; or what right of fishery do they possess on the shores of those islands, and what is meant by the term shore?

VI. Have American fishermen the right to enter the bays and harbours of this Province for the purpose of purchasing wood or obtaining water having provided neither of these articles at the commencement of their voyages, in their own country; or have they the right only of entering such bays and harbours in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?

VII. Under existing Treaties, what rights of fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects?

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## APPENDIX D.

### Opinion of the Queen's Advocate General, and Her Majesty's Attorney General of England, upon a case submitted by the Assembly of Nova Scotia, as to the construction of the Convention of 1818, relative to the fisheries:—

DOCTORS' COMMONS, 30th Aug., 1841.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Backhouse's letter of the 26th March, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, enclosing the copy of a Despatch from the Lieutenant Governor of Nova Scotia, enclosing an Address to Her Majesty from the House of Assembly of that Province, complaining of the continued encroachments of American Fishermen on the fishing grounds of Nova Scotia, and the adjoining Colonies, and praying that Her Majesty would establish, by an Order in Council, general regulations for the protection of the Fisheries, according to the code annexed to the Address.

Mr. Backhouse is pleased to request that we would take these papers into consideration, and report to Your Lordship our opinion, whether there is anything in the proposed regulations which would be inconsistent with the stipulations of

the Convention of the 20th October 1818, Between Great Britain and the United States of America.

We are also honored with Mr. Backhouse's letter of the 19th April, stating that he was directed to transmit to us a further letter from the Colonial Office, dated the 16th instant, enclosing the copy of a Despatch from the Lieutenant Governor of Nova Scotia, covering a copy of an Address from the Legislative Council of that Province, objecting to one of the above mentioned regulations proposed by the House of Assembly, in the session of 1838, and to request that we would take these matters into consideration, in addition to those referred to in his letter of the 26th March last, and that we would report to your Lordship, at our earliest convenience, our opinion thereon.

We are also honored with Mr. Backhouse's letter of the 8th June, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, together with the copy of a despatch from the Lieutenant Governor of Nova Scotia, enclosing a copy of a Report of the House of Assembly, on the subject of the fisheries of that Province, and also enclosing a case for opinion, as to what rights have been ceded to the citizens of the United States of America, and as to what rights have been exclusively reserved to Her Majesty's subjects, and to request that we would take the papers into consideration, and report to Your Lordship our opinion on the several questions stated in the case above mentioned.

We are also honored with Mr. Backhouse's letter of the 5th ult., stating that he was directed to transmit to us a correspondence, as marked in the margin, which has passed between the Foreign Office and Mr. Stephenson, the American Minister at this Court, and the Colonial Department, on the subject of a remonstrance addressed by Mr. Stephenson, against the proceedings of the authorities in Nova Scotia, towards American fishing vessels, encroaching on the fisheries of that coast, and to request that we would take these papers into consideration, and to report to your Lordship our opinion thereupon.

1st Query.—In obedience to Your Lordship's commands, we have taken these papers into consideration, and have the honor to report, that we are of opinion, that the Treaty of 1783 was annulled by the war of 1812; and we are also of opinion that the rights of fishery of the citizens of the United States must now be considered as defined and regulated by the Convention of 1818; and with respect to the general question 'if so, what right' we can only refer to terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

2nd and 3rd Queries.—Except within certain defined limits, to which the query put to us does not apply, we are of opinion, that by the terms of the Convention, American citizens are excluded from any right of fishing within three miles of the coast of British America, and that the prescribed distance of three

miles is to be measured from the headlands, or extreme points of land next the sea, or the coast, or of the entrance of bays, or indents of the coast, and consequently that no right exists, on the part of American citizens, to enter the bays of Nova Scotia there to take fish, although the fishing being within the bays, may be at a greater distance than three miles from the shore of the bay, as we are of opinion that the term 'headland' is used in the Treaty to express the part of the land we have before mentioned, including the interiors of the bays, and the indents of the coast.

4th Query.—By the Convention of 1818, it is agreed that American citizens should have the liberty of fishing in the Gulf of Saint Lawrence, and within certain defined limits, in common with British subjects; and such Convention, does not contain any words negativing the right to navigate the Passage or Strait of Canso, and therefore it may be conceded, that such right of navigation is not taken away by that Convention: but we have now attentively considered the course of Navigation to the Gulf by Cape Breton and likewise the capacity and situation of the passage of Canso, and of the British Possessions on either side; and we are of opinion that independently of Treaty, no Foreign country has the right to use or navigate the passage of Canso; and attending to the terms of the Convention, relating to the liberty of fishing to be enjoyed by the American citizens, we are also of opinion, that that Convention did not, either expressly or by necessary implication, concede any such right of using or navigating the passage in question. We are also of opinion that casting bait, to lure fish in the track of any American vessel navigating the passage, would constitute a fishing, within the negative terms of the Convention.

5th Query.—With reference to the claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed, that by the Convention, the liberty of drying and curing fish (purposes which could only be accomplished by landing) in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the Coast of Labrador, is specifically provided for; but such liberty is distinctly negatived in any settled bays, &c., and it must therefore be inferred, that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore, over which such liberty was to be exercised, and whether in settled or unsettled parts, but neither of these important particulars are provided for, even by implication, and that, among other considerations, leads us to the conclusion, that American citizens have no right to land, or conduct the fishery, from the shores of the Magdalen Islands. The word "shores" does not appear to have been used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would, therefore, comprise the

land covered with water, as far as could be available for the due enjoyment of the liberty granted.

6th Query.—By the Convention, the liberty of entering the Bays and Harbours of Nova Scotia for the purpose of purchasing wood and obtaining water is conceded in general terms, unrestricted by any condition expressed or implied, limiting the enjoyment to vessels duly provided with those articles at the commencement of their voyage; and we are of opinion that no such condition could be attached to the enjoyment of the liberty.

7th Query.—The rights of fishing ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing treaty on this subject betweeen the two countries, and the material points arising thereon have been specifically answered in our replies to the preceding queries.

We have &c.,

(Signed,) J. DODSON,
THOS. WILDE.

Viscount PALMERSTON, K. B., &c., &c.

# TABLE OF CONTENTS.


1 The Origin of American claims to participate in the Colonial Fisheries..... 3
2 The Fishery Article of the Treaty of 1783..... 3
3 The Treaty of 1783 as affected by the war of 1812..... 4
4 Position of affairs after the Treaty of Ghent..... 9
5 Fishery Article of the Convention of 1818..... 10
6 The Common Fishery rights of Nations in open seas..... 11
7 Exclusive Fishery rights of Nations in certain waters..... 11
8 The Territorial and Maritime Jurisdiction of Nations inclusive of sole rights of Fishing..... 12
9 The Convention of 1818 as relating to acquired Rights and concurrent Liberty of United States Citizens..... 15
10 Definition of Bays and Indents of Sea Coast with respect to maritime control and exclusive rights of fishery..... 16
11 Construction of the Convention of 1818..... 19
12 Are Americans entitled under the Convention of 1818 to fish at and land on the Magdalen Islands..... 20
Imperial Instructions..... 23
Imperial Act 59, Geo. III, Cap 38..... 24
Opinion of Imperial Law Officers of the Crown..... 28

1871.

THE

# TREATY OF WASHINGTON,

WITH

## CORRESPONDENCE, &c.

*In connection with the Appointment of the Commission; carefully collected from Official Sources.*

# TO THE PUBLIC.

THE great *desideratum* with regard to the Treaty of Washington, so far as Canada is concerned, is that the Canadian people should have the most ample opportunities for becoming familiar with it and all matters connected with it. It is in this way alone that they can hope to arrive at a just and prudent decision as to what their course should be with regard to the Treaty.

With this object in view, therefore, we have now published in pamphlet form, a carefully revised copy of the Treaty itself, together with some important correspondence, &c., connected therewith, which has never before been made public.

# CORRESPONDENCE

## *Respecting the Appointment of the Joint High Commission.*

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No. 1.

*Sir E. Thornton to Earl Granville.*—(*Received February* 19.)

(Extract.) *Washington, February* 6, 1871.

I HAVE the honor to enclose copies of a correspondence which has passed between Mr. Fish and myself relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering the questions which have lately arisen relative to the Canadian Fisheries, and any others which affect the relations of the United States towards Her Majesty's possessions in North America,—the so-called "Alabama" claims,—and any other claims of British subjects or citizens of the United States arising out of acts committed during the late Civil War in this country.

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Inclosure 1 in No. 1.

*Sir E. Thornton to Mr. Fish.*

Sir, *Washington, January* 26, 1871.

IN compliance with an instruction which I have received from Earl Granville, I have the honour to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belongs to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's Possessions in North America, and as

to any other questions between them which affect the relations of the United States towards those Possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have, &c.,
(Signed) EDWD. THORNTON.

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Inclosure 2 in No. 1.

*Mr. Fish to Sir E. Thornton.*

*Department of State, Washington, January* 30, 1871.

Sir,

I HAVE the honour to acknowledge the receipt of your note of the 26th January, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the Fisheries on the coasts of Her Majesty's Possessions in North America, and as to any

other questions between them which affect the relations of the United States towards those Possessions; and farther, that as the consideration of these questions would involve investigations of a somewhat complicated nature; and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a High Joint Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations, and the sincere, substantial, and lasting friendship between the two Governments, which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims," will also be essential to the restoration of cordial and amicable relations between the two Governments.

He directs me to say that, should Her Majesty's Government accept this view of this matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions

which now, unfortunately, stand in the way of an entire and abiding friendship between the two nations.

I have, &c.,

(Signed) HAMILTON FISH.

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Inclosure 3 in No. 1.

*Sir E. Thornton to Mr. Fish.*

Sir, *Washington, February* 1, 1871.

I HAVE the honour to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments, I have the honour to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which I beg you to believe I fully appreciate.

I am now authorized by his Lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

The expressions made use of in the name of the President in your above mentioned note with regard to the "Alabama" claims convince me that the Government of the United States will consider it of importance that these causes of dispute between the two countries should also and at the same time be done away with, and that

you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which cannot fail to make it more certain than its labours will lead to the removal of all differences between the two countries.

I have, &c.,
(Signed) EDWD. THORNTON.

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Inclosure 4 in No. 1.

*Mr. Fish to Sir E. Thornton.*

*Department of State, Washington, February* 3, 1871.

Sir,

I HAVE the honour to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama" claims.

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have, &c.,
(Signed) HAMILTON FISH.

No. 2.

*Earl Granville to Sir E. Thornton.*

Sir, *Foreign Office, February* 23, 1871.

I RECEIVED on the 19th instant your despatch of the 6th instant, inclosing copies of letters exchanged between yourself and the Secretary of State of the United States relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering pending questions between this country and the United States.

Her Majesty's Government having been regularly informed by you by telegraph of the satisfactory character of this correspondence, did not hesitate at once to send out the British Members of the Commission, and Lord de Grey and Mr. Bernard accordingly embarked for New York on the 11th, and Sir Stafford Northcote on the 18th instant; and it now only remains for me to acquaint you formally that Her Majesty's Government entirely approve of the tenor of your letters to Mr. Fish.

I am, &c.,
(Signed) GRANVILLE.

# THE COMMISSION.

*Full Power to the Earl de Grey and Ripon, Sir Stafford Henry Northcote, Sir Edward Thornton, Sir John Alexander Macdonald, and Montague Bernard, Esq., to negotiate with Plenipotentiaries of the United States.*

VICTORIA R.

VICTORIA, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c, To all and singular to whom these Presents shall come, Greeting. Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of Our Good Friends the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions in this behalf: Know Ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right trusty and right-well beloved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a Peer of Our United Kingdom, President of Our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c.; of Our right trusty and well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath, &c., &c.; of Our trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends the United States of America, &c., &c.; of Our trusty and well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General in Our Dominion of Canada, &c., &c.; and of Our trusty and well-beloved Montague Bernard, Esquire, Chicele Professor of International Law in the University of Oxford;—have named, made, constituted, and appointed, as We do by these presents name, make, consti-

tute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries: Giving to them, or to any three or more of them, all manner of power and authority to treat, adjust and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present: Engaging and promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof, We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court at Windsor Castle, the sixteenth day of February, in the year of Our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of Our reign.

# THE TREATY OF WASHINGTON.

## Article I.

Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the Acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims."

And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Goverment, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels and generically known as the "Alabama Claims," shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators, to be appointed in the following manner, that is to say: one shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; The President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperior of Brazil, as the case may be, may forthwith name another person to Act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to Act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to Act as such Arbitrator or Arbitrators.

ARTICLE II.

The Arbitrators shall meet at Geneva in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its agent to represent it generally in all matters connected with the Arbitration.

ARTICLE III.

The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV.

Within four months after the delivery on both sides of the written or printed case, either party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V.

It shall be the duty of the agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the agent of the other Party a written or printed argument, showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:

RULES.

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which

it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

## Article VII.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any

duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States, at Washington, within twelve months after the date of the award.

The award shall be in duplicate, one copy whereof shall be delivered to the agent of the United States for his Government, and the other copy shall be delivered to the agent of Great Britain for his Government.

ARTICLE VIII.

Each Government shall pay its own agent, and provide for the proper remuneration of the counsel employed by it and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE IX.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE X.

In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators.

The Board of Assessors shall be constituted as follows: One member thereof shall be named by the President of the United States, one member thereof shall be named by Her Britannic Majesty; and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause it shall be filled in the same manner in which the original appointment was made.

As soon as possible after such nominations the Board of Assessors shall be organized in Washington, with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of the United States and of Great Britain respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government, as counsel or agent. A majority of the Assessors in each case shall be sufficient for a decision.

The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively and dated.

Every claim shall be presented to the Assessors within six months from the day of their first meeting, but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time they shall make a final report within a further period of six months.

The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Secretary of State of the United States, and one copy thereof to the Representative of Her Britannic Majesty at Washington.

All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

The Board of Assessors may employ such clerks as they shall think necessary.

The expenses of the Board of Assessors shall be borne

equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

ARTICLE XI.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XII.

The High Contracting Parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the thirteenth of April, eighteen hundred and sixty-one, and the ninth of April, eighteen hundred and sixty-five, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this Treaty, and all claims, with the like exception, on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner—that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic

Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment; the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty, respectively; and such declaration shall be entered on the record of their proceedings.

## Article XIII.

The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claim; and to hear, if required, one person on each side, on behalf of each Government, as counsel or agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

ARTICLE XIV.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ARTICLE XV.

All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Article XVI of this Treaty.

ARTICLE XVI.

The Commissioners shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and agent or counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commission-

ers; provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

## Article XVII.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this Treaty upon either Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the same Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

## Article XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that the Salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the Islands aforesaid for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

It is agreed that the places designated by the Commissioners appointed under the first Article of the treaty between Great Britain and the United States, concluded at Washington on the 5th of June, 1854, upon the coasts of Her Britannic Majesty's Dominions and the United States, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

ARTICLE XXI.

It is agreed that, for the term of years mentioned in

Article XXXIII of this Treaty, fish oil and fish of all kinds, (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

## Article XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privilege accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded to the United States to the subjects of Her Britannic Majesty, as stated in articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

## Article XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date, when this article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore

provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period, after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

## Article XXIV

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacany occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

## Article XXV.

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and agent or counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

## Article XXVI.

The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall forever remain free and open for purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation.

The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

## Article XXVII.

The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use

of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States.

## Article XXVIII.

The navigation of Lake Michigan shall also, for the term of years mentioned in Article XXXIII of this treaty, be free and open for the purposes of commerce to the subjects of Her Britannic Majesty, subject to any laws and regulations of the United States or of the States bordering thereon not inconsistent with such privilege of free navigation.

## Article XXIX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, goods, wares, or merchandise arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may from time to time be specially designated by the President of the United States, and destined for Her Britannic Majesty's Possessions in North America, may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions, for the protection of the revenue as the Government of the United States may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without the payment of duties, from such Possessions through the territory of the United States for export from the said ports of the United States.

It is further agreed that, for the like period, goods, wares, or merchandise arriving at any of the ports of Her Britannic Majesty's Possessions in North America and destined for the United States may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the said Possessions, under such rules, regulations, and conditions for the protection of the revenue as the Governments of the said Possessions may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without

payment of duties, from the United States through the said Possessions to other places in the United States, or for export from ports in the said Possessions.

## Article XXX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the same, to another port or place within the territory of of the United States as aforesaid: Provided, That a portion of such transportation is made through the Dominion of Canada by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

Citizens of the United States may for the like period carry in United States vessels, without payment of duty, goods, wares, or merchandise from one port or place within the Possessions of Her Britannic Majesty in North America, to another port or place within the said Possessions: Provided, That a portion of such transportation is made through the territory of the United States by land carriage, and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

The Government of the United States further engages not to impose any export duties on goods, wares, or merchandise carried under this Article through the territory of the United States; and Her Majesty's Government engages to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandise carried under this Article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this Article in favor of the subjects of Her Britannic Majesty.

The Government of the United States may suspend the right of carrying granted in favor of the subjects of Her Britannic Majesty under this Article in case the

Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII.

ARTICLE XXXI.

The Government of Her Britannic Majesty further engages to urge upon the Parliament of the Dominion of Canada and the Legislature of New Brunswick, that no export duty, or other duty, shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river St. John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the Province of New Brunswick. And in case any such export or other duty continues to be levied after the expiration of one year from the date of the exchange of the ratifications of this treaty, it is agreed that the Government of the United States may suspend the right of carrying hereinbefore granted under Article XXX of this Treaty for such period as such export or other duty may be levied.

ARTICLE XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

ARTICLE XXXIII.

The foregoing Articles XVIII to XXV, inclusive, and Article XXX, of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain

by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.

## Article XXXIV.

Whereas it was stipulated by Article I of the Treaty concluded at Washington on the 15th of June, 1846, between the United States and Her Britannic Majesty, that the line of boundary between the territories of the United States and those of Her Britannic Majesty from the point on the forty-ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca Straits, to the Pacific Ocean;" and whereas the Commissioners appointed by the two High Contracting Parties to determine that portion of the boundary which runs southerly through the middle of the channel aforesaid, were unable to agree upon the same; and whereas the Government of Her Britannic Majesty claims that such boundary line should, under the terms of the Treaty above recited, be run through the Rosario Straits, and the Government of the United States claims that it should be run through the Canal de Haro, it is agreed that the respective claims of the Government of the United States and the Government of Her Britannic Majesty shall be submitted to the arbitration and award of His Majesty the Emperor of Germany, who, having regard to the above-mentioned Article of the said Treaty, shall decide thereupon, finally and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15, 1846.

## Article XXXV.

The award of His Majesty the Emperor of Germany shall be considered as absolutely final and conclusive; and full effect shall be given to such award without any objection, evasion, or delay whatsoever. Such decision shall be given in writing and dated; it shall be in whatsoever form His Majesty may choose to adopt; it shall be delivered to the Representatives or other public agents of the United States and of Great Britain, respectively, who may be actually at Berlin, and shall be considered as operative from the day of the date of the delivery thereof.

## Article XXXVI.

The written or printed case of each of the two Parties, accompanied by the evidence offered in support of the same, shall be laid before His Majesty the Emperor of Germany within six months from the date of the exchange of the ratifications of this Treaty, and a copy of such case and evidence shall be communicated by each Party to the other, through their respective Representatives at Berlin.

The High Contracting Parties may include in the evidence to be considered by the Arbitrator such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases.

After the written or printed case shall have been communicated by each Party to the other, each Party shall have the power of drawing up and laying before the Arbitrator a second and definitive statement, if it think fit to do so, in reply to the case of the other party so communicated, which definitive statement shall be so laid before the Arbitrator, and also be mutually communicated in the same manner as aforesaid, by each Party to the other, within six months from the date of laying the first statement of the case before the Arbitrator.

## Article XXXVII.

If, in the case submitted to the Arbitrator, either Party shall specify or allude to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the

Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one counsel or agent for each Party, in relation to any matter, and at such time, and in such manner, as he may think fit.

ARTICLE XXXVIII.

The Representatives or other public Agents of Great Britain and of the United States at Berlin respectively shall be considered as the agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications, and give all his notices, to such Representatives or other public agents, who shall represent their respective Governments generally in all matters connected with the arbitration.

ARTICLE XXXIX.

It shall be competent to the Arbitrator to proceed in the said abitration, and all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both agents, and either orally, or by written discussion or otherwise.

ARTICLE XL.

The Arbitrator may, if he think fit, appoint a secretary or clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

ARTICLE XLI.

The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

ARTICLE XLII.

The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said agents.

ARTICLE XLIII.

The present Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States of America by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged either at Washington or at London within six months from the date thereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

Done in duplicate at Washington the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

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# MESSAGE,

# DESPATCHES, AND MINUTES

OF THE

# PRIVY COUNCIL,

RELATING TO THE

# TREATY OF WASHINGTON.

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OTTAWA:
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1872.

*PRICE TWENTY-FIVE CENTS.*

[LISGAR.]

The Governor-General transmits for the information of the Senate certain Despatches and Minutes of the Privy Council having reference to the Treaty of Washington.

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## CORRESPONDENCE RESPECTING THE APPOINTMENT OF A JOINT HIGH COMMISSION TO CONSIDER THE VARIOUS QUESTIONS AFFECTING THE RELATIONS BETWEEN GREAT BRITAIN AND THE UNITED STATES OF AMERICA.

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No. 1.

*Sir E. Thornton to Earl Granville.—(Received February 19.)*

(Extract.) WASHINGTON, February 6, 1871.

I have the honor to inclose copies of a correspondence which has passed between Mr. Fish and myself relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering the questions which have lately arisen relative to the Canadian Fisheries, and any others which affect the relations of the United States towards Her Majesty's possessions in North America,—the so-called "Alabama" claims, —and any other claims of British subjects or citizens of the United States arising out of acts committed during the late Civil War in this country.

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Inclosure 1 in No. 1.

*Sir E. Thornton to Mr. Fish.*

WASHINGTON, January 26, 1871.

SIR,—In compliance with an instruction which I have received from Earl Granville, I have the honor to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coast of Her Majesty's Possessions in North America, and as to any other questions between them which affect the relations of the United States towards those Possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its Session at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have, &c.,
(Signed) EDWD. THORNTON.

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Inclosure 2 in No. 1.

*Mr. Fish to Sir E. Thornton.*

DEPARTMENT OF STATE, WASHINGTON,
January 30, 1871.

SIR,—Ihave the honor to acknowledge the receipt of your note of the 26th January, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the Fisheries on the coasts of Her Majesty's Possessions in North America, and as to any other questions between them which affect the relations of the United States towards those Possessions; and farther, that as the consideration of these questions would involve investigations of a somewhat complicated nature; and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations, and the sincere, substantial, and lasting friendship between the two Governments, which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims," will also be essential to the restoration of cordial and amicable relations between the two Governments.

He directs me to say that, should Her Majesty's Government accept this view of this matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions which now, unfortunately, stand in the way of an entire and abiding friendship between ths two nations.

I have, &c.,

(Signed) HAMILTON FISH.

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Inclosure 3 in No. 1.

*Sir E. Thornton to Mr. Fish.*

WASHINGTON, February 1. 1871.

SIR,—I have the honor to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments, I have the honour to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which I beg you to believe I fully appreciate.

I am now authorized by his Lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

The expressions made use of in the name of the President in your above-mentioned note with regard to the "Alabama" claims convince me that the Government of the United States will consider it of importance that these causes of dispute between the two countries should also and at the same time be done away with, and that you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which cannot fail to make it more certain that its labours will lead to the removal of all differences between the two countries.

I have, &c.

(Signed) EDWD. THORNTON.

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Inclosure 4 in No. 1.

*Mr. Fish to Sir E. Thornton.*

DEPARTMENT OF STATE,

WASHINGTON, February 3, 1871.

SIR,—I have the honour to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission which Her Majesty's Government have proposed that the questions relating to the British Possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama" claims.

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this conntry, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have, &c.

(Signed) HAMILTON FISH.

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No. 2.

*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE,

February 23, 1871.

SIR,—I received on the 19th instant your despatch of the 6th instant, inclosing copies of letters exchanged between yourself and the Secretary of State of the United States, relative to the appointment of a Joint High Commission to sit at Washington for the purpose of considering pending questions between this country and the United States.

Her Majesty's Government, having been regularly informed by you by telegraph of the satisfactory character of this correspondence, did not hesitate at once to send out the British Members of the Commission, and Lord de Grey and Mr. Bernard accordingly embarked for New York on the 11th, and Sir Stafford Northcote on the 18th instant; and it now only remains for me to acquaint you formally that Her Majesty's Government entirely approve of the tenor of your letters to Mr. Fish.

I am, &c.

(Signed) GRANVILLE.

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No. 3.

*Full Power to the Earl de Grey and Ripon, Sir Stafford Henry Northcote, Sir Edward Thornton, Sir John Alexander Macdonald, and Montague Bernard, Esq., to negotiate with Plenipotentiaries from the United States.*

VICTORIA R.

VICTORIA, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., To all and singular to whom these Presents shall come, Greeting. Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of Our Good Friends the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions in this behalf: Know ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right trusty and right well-beloved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a Peer of Our United Kingdom, President of Our Most Honorable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c., of Our right trusty and well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honorable Order of the Bath, &c., &c.; of Our trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends the United States of America, &c., &c.; of Our trusty and well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General in Our Dominion of Canada, &c., &c.; and of Our trusty and well-beloved Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford:—have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries: Giving to them, or any three or more of them, all manner of power and authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present: Engaging and promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court at Windsor Castle, the sixteenth day of February, in the year of Our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of Our reign.

*The Earl of Kimberly to Lord Lisgar.*

(Copy—Canada.)

DOWNING STREET,

16th February, 1871.

MY LORD,—You have already been informed by telegram of the views of Her Majesty's Government upon the Fishery Questions, but I think it will be convenient, with reference to the pending negoaiations, that a somewhat fuller statement of those views should now be placed on record.

It would not be possible for Her Majesty's Government to pledge themselves to any forgone conclusion upon any particular point connected with these negotiations, but they have anxiously considered the questions which concerns Canada; and they feel confident that the Canadian Government, will agree with them that a satisfactory termination of the difficulties which have arisen with the United States, can only be attained by taking as broad and liberal a view as is consistent with the just rights and real interests of the Dominion.

As at present advised, Her Majesty's Government, are of opinion that the right of Canada to exclude Americans from fishing in the waters within the limits of three marine miles of the coast, is beyond dispute and can only be ceded for an adequate consideration.

Should this consideration take the form of a money payment, it appears to Her Majesty's Government, that such an arrangement would be more likely to work well than if any conditions were annexed to the exercise of the privilege of fishing within the Canadian waters.

The presence of a considerable number of cruisers would always be necessary to secure the performance of such conditions and the enforcement of penalties for the non-observance of them would be certain to lead to disputes with the United States.

With respect to the question, what is a Bay or Creek, within the meaning of the first Article of the Treaty of 1818, Her Majesty's Government adhere to the interpretation which they have hitherto maintained of that Article, but they consider that the difference which has arisen with the United States on this point, might be a fit subject for compromise.

The exclusion of American fishermen from resorting to Canadian Ports, "except for "the purpose of shelter, and of repairing damages therein, of purchasing wood and "of obtaining water," might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act, 59, Geo. III., chap. 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure—inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British Subjects.

In conclusion I have to state that Her Majesty fully appreciated the loyal and prompt manner in which the Canadian Government have assented to the appointment of the Commision which is about to sit at Washington.

The high character and recognised ability of the British Commissioners afford ample security that the interests of Canada will be carefully protected during the forthcoming negotiations.

I have, &c.,

(Signed) KIMBERLY.

*The Earl of Kimberly to Lord Lisgar.*

(Copy—Canada—No. 374.)

DOWNING STREET,

17th March, 1871.

MY LORD,—In answer to your telegram received on the 10th instant, stating that in the opinion of your Government, the Canadian Fisheries cannot be sold without the consent of the Dominion, I have already informed your Lordship by Telegraph that Her Majesty's Government never had any intention of advising Her Majesty to part with those fisheries without such consent.

When the Reciprocity Treaty was concluded, the Acts of the Nova Scotian and New Brunswick Legislatures relating to the Fisheries were suspended by Acts of those Legislatures, and the Fishery rights of Canada are now under the protection of a Canadian Act of Parliament, the repeal of which would be necessary in case of the cession of those rights to any Foreign Power.

I think it right however to add that the responsibility of determining what is the true construction of a Treaty, made by Her Majesty with any foreign power, must remain with Her Majesty's Government, and that the degree to which this Country would make itself a party to the strict enforcement of Treaty Rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted.

I have, &c.,

(Signed) KIMBERLY.

Governor General
The Right Honorable Lord Lisgar,
G. C. B., G. C. M. G., &c., &c., &c.

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(Copy—Canada—No. 444.)

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET,

17th June, 1871.

MY LORD,—I have the honor to enclose, herewith, copies of the Treaty signed at Washington, on May 8th, by the Joint High Commissioners, which has been ratified by Her Majesty and by the President of the United States, and of the Instructions to Her Majesty's High Commissioners and Protocols of the Conferences held by the Commission. The Dominion is from its geographical position as the immediate neighbour of the United States, so peculiarly interested in the maintenance of cordial relations between that Republic and the British Empire, that it must be a source of satisfaction to the Canadian Government, that Her Majesty has been able to conclude a Treaty for the amicable settlement of differences which might have seriously endangered the good understanding between the two countries.

Moreover, the Rules laid down in Article VI, as to the international duties of neutral governments are of special importance to the Dominion which carries on such an extensive and increasing maritime commerce, and possesses such a considerable merchant navy.

But independently of the advantages which Canada must derive from the removal of the causes of difference with the United States arising out of occurrences during the civil war, Her Majesty's Government believe that the settlement which has been arrived

at of the questions directly affecting British North America, cannot fail to be beneficial to the Dominion. I need not refer to the well known history of the Fishery question, further than to observe that ever since the termination by the British Government, in consequence of the war of 1812, of the liberty enjoyed, under the Treaty of 1783, by American citizens of fishing in the territorial waters of the British Colonies, and the renunciation by the United States in the Treaty of 1818 of all claim to that liberty, this question has in different forms been the subject of controversy with the United States. Her Majesty's Government have always contended for the rights of the Colonies, and they have employed the British Naval forces in the protection of the Colonial fisheries; but they could not overlook the angry feelings to which this controversy has given rise, and the constant risk that in the enforcement of the exclusion of American fishermen from the Colonial waters a collision might take place which might lead to the most serious consequences, and they would have been wanting in their duty, if they had not availed themselves of the opportunity presented by the late negotiation to remove a cause of perpetual irritation and danger to the relations of this country and the Dominion with the United States.

The Canadian Government itself took the initiative in suggesting that a Joint British and American Commission should be appointed, with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818, but it was certain that however desirable it might be, in default of any complete settlement, to appoint such a Commission, the causes of the difficulty lay deeper than any question of interpretation, and the mere discussion of such points as the correct definition of bays could not lead to a really friendly agreement with the United States. It was necessary, therefore, to endeavour to find an equivalent which the United States might be willing to give in return for the fishery privileges, and which Great Britain, having regard both to Imperial and Colonial interests, could properly accept. Her Majesty's Government are well aware that the arrangement which would have been most agreeable to Canada was the conclusion of a Treaty similar to the Reciprocity Treaty of 1854, and a proposal to this effect was pressed upon the United States Commissioners, as you will find in the 36th Protocol of the Conferences. This proposal was, however, declined, the United States Commissioners stating "that they could hold out no hope that the Congress of the United States would "give its consent to such a tariff arrangement as was proposed, or to any extended plan "of reciprocal free admission of the products of the two countries." The United States Commissioners did indeed propose that coal, salt and fish, should be reciprocally admitted free, and lumber after the 1st of July, 1874; but it is evident that looked at as a tariff arrangement this was a most inadequate offer, as will be seen at once when it is compared with the long list of articles admitted free under the Reciprocity Treaty. Moreover, it is obvious from the frank avowal of the United States Commissioners, that they only made this offer because one branch of Congress had recently more than once expressed itself in favor of the abolition of duties on coal and salt, and because Congress had partially removed the duty from lumber, and the tendency of legislation in the United States was towards the reduction of taxation and of duties, so that to have ceded the Fishery rights in return for these concessions would have been to exchange them for commercial arrangements, which there is reason to believe may before long be made without any such cession, to the mutual advantage of both the Dominion and the United States; and Her Majesty's Government are bound to add that whilst in deference to the strong wishes of the Dominion Government they used their best efforts to obtain a renewal in principle of the Reciprocity Treaty, they are convinced the establishment of free trade between the Dominion and the United States is not likely to be promoted by making admission to the fisheries dependent upon the conclusion of such a Treaty; and that the repeal by Congress of duties upon Canadian produce on the ground that a Protective Tariff is injurious to the country which imposes it, would place the commercial relations of the two countries on a far more secure and lasting basis than the stipulations of a Convention framed upon a system of reciprocity. Looking, therefore, to all the circumstances, Her Majesty's Government found it their duty to deal separately with the

Fisheries, and to endeavour to find some other equivalent; and the reciprocal concession of free fishery with free import of fish and fish oil, together with the payment of such a sum of money as may fairly represent the excess of value of the Colonial over the American concession, seems to them to be an equitable solution of the difficulty. It is perfectly true that the right of fishery on the United States coasts, conceded under Article XIX, is far less valuable than the right of fishery in Colonial waters, conceded under Article XVIII, to the United States, but on the other hand, it cannot be denied that it is most important to the Colonial fishermen to obtain free access to the American market for their fish and for fish oil, and the balance of advantage on the side of the United States will be duly redressed by the Arbitrators under Article XXII. In some respects a direct money payment is perhaps a more distinct recognition of the rights of the Colonies than a tariff concession, and there does not seem to be any difference in principle between the admission of American fishermen for a term of years in consideration of the payment of a sum of money in gross, and their admission under the system of Licenses, calculated at so many dollars per ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty. In the latter case, it must be observed, the use of the Fisheries was granted without any tariff concession whatever on the part of the United States, even as to the importation of fish.

Canada could not reasonably expect that this country should, for an indefinite period, incur the constant risk of serious misunderstanding with the United States; imperilling, perhaps, the peace of the whole Empire, in order to endeavour to force the American Government to change its commercial policy; and Her Majesty's Government are confident that, when the Treaty is considered as a whole, the Canadian people will see that their interests have been carefully borne in mind, and the advantages, which they will derive from its provisions, are commensurate with the concessions which they are called upon to make. There cannot be a question as to the great importance to Canada of the right to convey goods in bond through the United States, which has been secured to her by Article XXIX; and the free navigation of Lake Michigan, under Article XXVIII; and the power of transhipping goods, under Article XXX, are valuable privileges which must not be overlooked in forming an estimate of the advantages which Canada will obtain. Her Majesty's Government have no doubt that the Canadian Government will readily secure to the citizens of the United States, in accordance with Article XXVII, the use of the Canadian Canals, as, by the liberal policy of the Dominion, those Canals are already opened to them on equal terms with British subjects; and they would urge upon the Dominion Parliament and the Legislature of New Brunswick, that it will be most advisable to make the arrangement as to duties on lumber floated down the St. John River, upon which the execution of Article XXX. as to the transhipment of goods, is made contingent.

The freedom to navigate the St. Lawrence, which is assured to the United States by Article XXVI., has long existed in fact, and its recognition by Treaty cannot be prejudicial to the Dominion, which moreover, obtains in return, the free use of certain rivers on the Pacific side of the Continent.

I must not omit to notice that, by Article XXXIV., the dispute as to the Island of St. Juan, is to be submitted to arbitration; and provision has thus happily been made for the amicable termination of a long-standing and difficult controversy at a time when, in consequence of the union of British Columbia with the Dominion, this boundary question has become matter of interest to the whole Confederation of British Provinces.

I have thus gone through those parts of the Treaty which immediately touch the Dominion; but a question of much moment remains as to the course which should be taken during the present fishing season, pending the enactment by the respective Legislatures of the Laws necessary to bring the Fishery Articles into operation.

I find that, on the conclusion of the Reciprocity Treaty, in June, 1854, and previous to its ratification, the then American Secretary of State (Mr. Marcy) expressed the hope of his Government that American Fishermen would not be molested if they should at

once attempt to use the privileges granted by that Treaty. A despatch was therefore addressed to the Governor of the North American Colonies recommending that the wish of the United States Government should be acceded to, and that the American fishermen should be immediately admitted to the Colonial fisheries. The result was that the various Colonial Governments at once admitted the American fishermen to the fisheries, although the Legislative Acts necessary to give effect to the Treaty were not passed till late in the autumn. It is evidently most desirable that a similar course should be pursued on the present occasion; and you will perceive from the notes which have passed between Sir E. Thornton and Mr. Fish, copies of which I enclose, that the United States Government have made an application similar to that which they made in 1854; and that Her Majesty's Government have engaged to recommend to the Colonial Governments that it should be acceded to. Her Majesty's Government are of course aware that the Colonial Governments have no power to set aside the fishery statutes by their own authority; but it is entirely within their power to take no active steps to enforce those statutes and to suspend the instructions to the Colonial Cruisers to exclude American citizens from the fisheries, just as it is in the power of Her Majesty's Government to suspend the action of Her Majesty's Cruisers, although the Imperial Fishery Statute is still in force.

Her Majesty's Government have no desire whatever to attempt to interfere with the entire right of the Colonial Legislatures to refuse to pass the acts necessary to give effect to the Treaty, though they would deeply deplore that a course which they believe would be most impolitic should be taken; but, on the other hand, they have too much confidence in the wisdom of those free Assemblies, to anticipate any such result; and they are confident that the Canadian Government would be as desirous as Her Majesty's Government that no untoward collision should occur during the present season which might prejudice the fair consideration of the Treaty, both by the American Congress and the Colonial Parliaments; and that, on a full consideration of the circumstances, they will see that the responsibility of incurring the risk of such a collision would be far heavier than that of removing, so far as they have the power, the obstacles to the provisional enjoyment by American citizens of the privileges which it is intended by the Treaty to secure to them for a longer time.

I cannot conclude this Despatch without expressing the gratification which it has given Her Majesty's Government to have had the valuable assistance of Sir J. Macdonald, in the negotiation of this Treaty. Whatever view may be taken in Canada of the merits of the Treaty, it must be an unqualified cause of satisfaction to the Canandians to know that they were represented by a Statesman holding so distinguished a position in the Canadian Government, and so well able, from his knowledge and experience, to put forward with the greatest force and authority the arguments best suited to promote the claims and interests of the Dominion.

I have, &c.,

(Signed) KIMBERLEY.

Governor-General
The Right-Honorable Lord Lisgar,
G.C.B, &c., &c., &c.

## INSTRUCTIONS TO HER MAJESTY'S HIGH COMMISSIONERS, AND PROTOCOLS OF CONFERENCES HELD AT WASHINGTON BETWEEN FEBRUARY 27 AND MAY 6, 1871.

### No. 1.

*Earl Granville to Her Majesty's High Commissioners.*

FOREIGN OFFICE, February, 9, 1871.

MY LORD AND GENTLEMEN,—The Queen having been graciously pleased to appoint you to be Her Majesty's High Commisioners to proceed to Washington for the purpose of of discussing in a friendly spirit with Commissioners to be appointed by the Government of the United States the various questions on which differences have arisen between Great Britain and that country, and of treating for an agreement as to the mode of their amicable settlement, I inclose the necessary full powers, and have the honour to convey to you the following instructions for your guidance.

It is the earnest desire of Her Majesty's Government that the important negociation with which you are entrusted should be conducted in a mutually conciliatory disposition, and with unreserved frankness in your communications with the High Commissioners or Members of the Government of the United States with whom you may be placed in communication, and they believe that this object cannot be better attained than by leaving you full discretion as to the manner in which the subjects which may engage your attention should be discussed.

The principal subjects will probably be :—

1. The Fisheries.
2. The free navigation of the River St. Lawrence and privilege of passage through the Canadian Canals.
3. The transit of goods through Maine, and lumber trade down the River St. John.
4. The Manitoba boundary.
5. The claims on account of the "Alabama," "Shenandoah," and certain other cruizers of the so-styled Confederate States.
6. The San Juan water boundary.
7. The claims of British subjects arising out of the Civil War.
8. The claims of the people of Canada on account of the Fenian raids.
9. The revision of the rules of Marine Neutrality.

Copies of all the correspondence which has been presented to Parliament respecting the questions will be forwarded for your use.

#### 1. *The Fisheries.*

On the termination of the Reciprocity Treaty of the 5th of June, 1854, by the United States' Government, the discussions respecting the rights of Americain fishermen under Article I of the Convention of the 20th of October, 1818, which had been set at rest by the Reciprocity Treaty, were revived, and, although temporary measures were taken to avoid pressing with severity upon Americain fishermen by the adoption of a system of licenses, it has been found impraticable to continue that system indefinitely, and, on its withdrawal, much excitement has been occasioned among the coast population of the Eastern States of the Union by the capture of boats engaged in illegal fishing, contrary to the Convention of 1818.

The correspondence will put you in possession of the facts of the several captures,

and enable you to judge, and explain if necessary, how far the pretentions of the American fishermen are exaggerated, and the leniency with which they have been treated under the directions of Her Majesty's Government and of the Government of the Dominion by the officers charged with the protection of the British Fisheries.

Irrespective, however, of the captures and confiscations of boats during the recent fishing season, there are. and have been for many years, differences of interpretation put upon the Convention of 1818 by the respective Governments, which might, at any time, rise into serious importance.

The two chief questions are : As to whether the expression " three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions " should be taken to mean a limit of three miles from the coast line or a limit of three miles from a line drawn from headland to headland ; and whether the proviso that " the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever," is intended to exclude Americain vessels from coming inshore to traffic, tranship fish, purchase stores, hire seamen, &c.

Her Majesty's Government would be glad to learn that you were able to arrive at a conclusive understanding with the Commissioners of the United States upon the disputed interpretation of the Convention of 1818 ; but they fear that you will find it expedient that a settlement should be arrived at by some other means, in which case they will be prepared for the whole question of the relations between the United States and the British Possessions in North America, as regards the Fisheries, being referred for consideration and inquiry to an International Commission, on which two Commissioners to be hereafter appointed, in consultation with the Government of the Dominion, should be the British Representatives.

Should the Government of the United States concur in this, it would be advisable that no time should be lost in appointing Commissioners on their side, and in the Commission commencing its labours ; and, as it is scarcely probable that the Commissioners will be able to report, and a Treaty be framed, before the commencement of the next fishing season, it would be also desirabie that you should agree upon some means, by license or otherwise, by which disputes may be avoided in the meanwhile.

### *2. Free Navigation of the River St. Lawrence, and Privilege of Passage through the Canadian Canals.*

The President of the United States, in his Message at the opening of Congress in December last, referred to the claim of free navigation of the River St. Lawrence as being an occasion of difference between the two countries.

The IVth Article of the Reciprocity Treaty provided that the citizens and inhabitants of the United States should be allowed to navigate the River St. Lawrence and the canals of Canada ; and Her Majesty's Government are not aware that any practical difficulty as to the free navigation of the St. Lawrence has arisen since the abrogation of that Treaty.

The exclusive right to the navigation of the St. Lawrence was maintained by this country throughout the discussions between the two Governments on the subject in 1824–27, and has been acknowledged as existing by this Article of the Reciprocity Treaty, under which the British Goverment retained the right of suspending the privilege.

Her Majesty's Government are, nevertheless, now willing to admit the principle of the navigation of the St. Lawrence being free to the citizens of the United States, subject to such tolls and regulations as may be imposed equally on British subjects.

This, however, cannot extend, except as a special privilege, to the passage through the canals constructed by Canadian enterprize through British territory, without which, from the strength of the current and dangerous rapids, the navigation of the St. Lawrence cannot be profitably conducted ; and the best course will probably be found to be to refer

these questions for detailed examination and mutual arrangement in relation to the transit of goods in bond through Maine, St. John River lumber trade, navigation of Lake Michigan, passage through the canals in United States' territory, and other similar matters, to the Commission to be appointed to consider and report upon the Fisheries.

### 4. *The Manitoba boundary.*

The President has already intimated to Congress that he is of opinion that the survey of the boundary along the 49th parallel, which has only been carried out across the Rocky Mountains to the Gulf of Georgia, should be completed from the Lake of the Woods to the foot of the Rocky Mountains.

In this Her Majesty's Government concur, and will be ready to appoint a Commission for the purpose whenever the United States' Government think fit.

### 5. *The "Alabama," "Shenandoah," &c., claims.*

Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the "Alabama," "Shenandoah," and "Georgia," the vessels which were furnished on account of the so-styled Confederate States and armed outside of British jurisdiction, and of the "Florida" which, though built in England, was armed and equipped in the port of Mobile.

The history of these vessels is so fully explained in the long correspondence which has taken place with regard to them, that it is unnecessary for me now to do more than point out that the claims which have been preferred on account of the "Alabama" stand on a different footing to those arising from the captures made by the other cruizers; in so far as the "Alabama" escaped from Liverpool after evidence had been supplied by the United States' Minister of the service for which she was intended.

Her Majesty's Government adhere to the principle of arbitration for the settlement of these claims, which was recognized and adopted in the Convention signed by Lord Clarendon and Mr. Reverdy Johnson as being, in their opinion, the most appropriate mode of settling this question; and, should arbitration be adopted, Her Majesty's Government would concur, if the United States' Government proposed it, in Jurists properly selected being made the Arbitrators instead of a Sovereign or State, as provided in the late Convention.

Although, however, Her Majesty's Government are of opinion that arbitration is the most appropriate mode of settlement, you are at liberty to transmit for their consideration any other proposal which may be suggested for determining and closing the question of these claims.

For the escape of the "Alabama" and consequent injury to the commerce of the United States, Her Majesty's Government authorize you to express their regret in such terms as would be agreeable to the Government of the United States and not inconsistent with the position hitherto maintained by Her Majesty's Government as to the international obligations of neutral nations.

### 6. *The San Juan Water Boundary.*

The line of water boundary under the 1st Article of the Treaty of June 15th 1846, upon which the British and American Commissioners appointed for its demarcation differed, was proposed by Lord Russell as a fit subject for arbitration in 1859; but, owing to the Civil War, the negotiations then instituted were not brought to a conclusion, and it was not until the 14th of January, 1869, that a Convention was signed between Lord Clarendon and Mr. Reverdy Johnson for referring the matter to an Arbitrator;

the President of the Swiss Confederation being selected at the instance of the Government of the United States.

Although this Convention was recommended by the Senate Committee of Foreign Affairs for ratification, it has not been brought before the Senate, and the period within which its ratification should have taken place has now expired.

This delay has been accounted for by the United States' Government as having been occasioned by the delay, necessarily unavoidable, in carrying through the Imperial Parliament the measures required for enabling the Naturalization Treaty to be concluded; the two Treaties having been in the first instance included in the same negotiation under the Protocol of the 10th of November, 1868, upon which the Treaty of the 14th of January, 1869, was framed.

The Naturalization Treaty having been ratified some months ago, Her Majesty's Government trust that the Government of the United States will no longer hesitate to act upon the Water Boundary Treaty, which should in that case be appended to and form part of the General Treaty for the mode of settlement of all outstanding differences which you are empowered to sign.

Should, however, a form of arbitration admitting of more free discussion be preferred, Her Majesty's Government would assent to such a proposal.

### 7. *The Claims of British Subjects.*

Throughout the negotiations on the "Alabama," "Shenandoah," &c., claims, Her Majesty's Government have always urged that any satisfactory settlement of those claims must be accompanied by a simultaneous settlement of the claims of British subjects arising out of the civil war, and provision was made for this purpose in the Claims Convention.

*See "North America," No., 1 (1869), page 44.

Her Majesty's Government would expect that the Government of the United States would readily consent to all claims of British subjects against the United States, or of United States' citizens against Great Britain, being referred to a Mixed Commission, formed of one Commissioner from each country and an Umpire, as was done under the Convention of the 8th of February, 1853.

### 8. *The Claims of the People of Canada an account of the Fenian Raid.*

In connection with the claims of British subjects there is a claim on the part of the people of the Dominion of Canada for losses in life and property and expenditure, occasioned by the filibustering raids on the Canadian frontier, carried on from the territory of the United States in the years 1866 and 1870.

The Government of the Dominion having solicited Her Majesty's Government to bring this claim before the Government of the United States, were requested some time ago to prepare a statement to be submitted to that Government, but it has not yet been received.

In the meanwhile the accompanying account of the Fenian Brotherhood, which has been drawn up by Lord Tenderden, will supply you with full information as to the encouragement and support rendered in the United States to this and other Irish American revolutionary societies.

### 9. *Revision of Rules of Maritime Neutrality.*

It would be desirable to take this opportunity to consider whether it might not be the interest of both Great Britain and the United States to lay down certain rules of inter-

national comity in regard to the obligations of maritime neutrality, not only to be acknowledged for observance in their future relations, but to be recommended for adoption to the other Maritime Powers.

I have thus touched briefly upon the subjects likely principally to engage your attention, and have indicated the manner in which they may be possibly treated; but Her Majesty's Government wish you to understand that you are not thereby precluded from entertaining the consideration of other questions or making any suggestions you may think proper for their settlement.

Her Majesty's Government request, however, that if the mode of dealing with any particular matter which you may be disposed to agree to, should vary materially from the manner of settlement to which I have informed you Her Majesty's Government are prepared at once to assent, or, in case of any disagreement of importance occurring between yourselves and the American High Commissioners, you should at once report by telegraph and await further instructions.

I am, &c.,
(Signed,) GRANVILLE.

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No. 2.

*Earl Granville to Her Majesty's High Commission.*

FOREIGN OFFICE, February, 9th, 1871.

MY LORD AND GENTLEMEN,—With reference to my other despatch of this day's date, in which I have adverted to the revision of the rules of maritime neutrality as being one of the subjects which will probably be presented for your consideration, I have to state to you that the extent to which a neutral country may be hereafter held justly liable for the despatch, after notice, of a vessel under similar circumstances to those in the case of the "Alabama" cannot be precisely defined in the present stage of the controversy; but there are other points in which it may be convenient to you to be informed beforehand that this Government are willing to enter into an agrement.

These are :—

That no vessel employed in the military or naval service of any belligerent which shall have been equipped, fitted out, armed, or dispatched contrary to the neutrality of neutral State, should be admitted into any part of that State.

That prizes captured by such vessels, or otherwise captured in violation of the neutrality of any State, should, if brought within the jurisdiction of that State, be restored.

That in time of war, no vessel should be recognized as a ship of war, or received in any port of a neutral State as a ship of war, which has not been commissioned in some port in the actual occupation of the Government by whom her commission is issued.

The first of these Rules has been incorporated into the Foreign Enlistment Act, passed during the last year, and both the first and second were included in the Report of the Royal Commission for inquiring into the Neutrality Laws.

I am, &c.,
(Sigued) GRANVILLE.

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No. 3.

*Earl Granville to the Lord High Commission.*

Foreign Office, February 9, 1871.

My Lord and Gentlemen,—I have to inform you that Lord Tenterden has been appointed Secretary to the High Commission, and will proceed to Washington accordingly.

I am, &c.,
(Signed) Granville.

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No. 4.

Protocols of Conferences between the High Commissioners on the part of Great Britain and the High Commissionerrs on the part of the United States of America.

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*1st. Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.*

Washington, February 27, 1871.

The High Commissioners having met, their full powers were respectively produced, which were found satisfactory, and copies thereof exchanged, as follows:—

"Victoria R.

"Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., To all and singular to whom these Presents shall come, Greeting:

"Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of Our Good Friends the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions in this behalf:

"Know ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right trusty and right well-beloved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a Peer of Our United Kingdom, President of Our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c., of Our right trusty and well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath, &c., &c.; of Our trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends the United States of America, &c., &c.; of Our trusty and well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General in Our Dominion of Canada, &c., &c.; and of Our trusty and well-beloved Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford;—have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries:

Giving to them, or to any three or more of them, all manner of power any authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do if personally present: Engaging and promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

"In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

"Given at Our Court at Windsor Castle, the sixteenth day of February, in the year of Our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of Our reign."

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"Ulysses S. Grant, President of the United States of America, To all who shall see these presents, Greeting:

"Know ye that, reposing special trust and confidence in the integrity and ability of Hamilton Fish, Secretary of State; Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer R. Hoar, of Massachusetts; and George H. Williams of Oregon; I have nominated and, by and with the advice and consent of the Senate, do appoint them jointly and severally, to be Commissioners on the part of the United States, in a Joint High Commission between the United States and Great Britain; hereby empowering them, jointly and severally, to meet the Commissioners appointed or to be appointed on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which shall come before the said Joint High Commission, and the said office to hold and exercise during the pleasure of the President of the United States for the time being.

"In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

"Given under my hand at the city of Washington, this 10th day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

[Seal.] (Signed) "U. S. GRANT.

"By the President:

(Signed) "HAMILTON FISH, Secretary of State."

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It was proposed by the British High Commissioners that Mr. Fish, Secretary of State of the United States, should preside.

The United States Commissioners stated that, although appreciating the proposal, they did not consider it necessary that a President should be named.

The High Commissioners, on the suggestion of Mr. Fish, requested that Lord Tenterden, Secretary of the British High Commission, and Mr. Bancroft Davies,

Assistant-Secretary of State of the United States, acting as Secretary to the United States High Commission, to undertake the duties of Joint Protocolists.

The High Commissioners then agreed that the subjects for discussion should be those mentioned in the following correspondence which had taken place between the two Governments.

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1. *Sir E. Thornton to Mr. Fish, January* 26, 1871.

[See "North America, No. 1 (1871)," Inclosure 1 in No. 1.]

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2. *Mr. Fish to Sir E. Thornton, January* 30, 1871.

[Ibid., Inclosure 2 in No. 1.]

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3. *Sir E. Thornton to Mr. Fish, February* 1, 1871.

[Ibid., Inclosure 3 in No. 1.[

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4. *Mr. Fish to Sir E. Thornton, February* 3, 1871.

[Ibid., Inclosure 4 in No. 1.]

The Commissioners further determined that the discussion might include such other matters as might be mutually agreed upon.

The meeting of the High Commission was then adjourned to the 4th of March.

(Signed,) TENTERDEN,
J. C. BANCROFT DAVIS.

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*2nd Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.*

WASHINGTON, March 4, 1871.

The High Commissioners having met, the Protocol of the Conference held on the 27th of February was read and confirmed.

At the commencement of the Conference the United States' High Commissioners called attention to the provision in the Constitution of the United States by which the advice and consent of the Senate is required for the ratification of any Treaty which may be signed under the authority of the President.

The British High Commissioners stated that they were acquainted with this provision.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Conference was adjourned to the 6th of March.

(Signed,) TENTERDEN.
J. C. BANCROFT DAVIS.

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*3rd Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.*

WASHINGTON, March 6, 1871.

The Commissioners having met, the Protocol of the Conference held on the 4th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Conference was adjourned to the 8th of March.

(Signed,) TENTERDEN.
J. C. BANCROFT DAVIS.

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[The subsequent Protocols to No. XXXIV are to the same effect as Protocol No. III.]

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*35th Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.*

WASHINGTON, May 3, 1871.

The High Commissioners having met, the Protocol of the Conference held on the 25th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The American Commissioners produced the following further full-power, under the seal of the United States, authorizing them to conclude and sign a Treaty :—

" Ulysses S. Grant, President of the United States of America, to all to whom these presents shall come,—GREETING :

" Know ye that whereas by my power bearing date the 10th day of February last, Hamilton Fish, Secretary of State, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain, Samuel Nelson, an Associate Justice of the Supreme Court of the United States, Ebenezer R. Hoar, of Massachusetts, and George H. Williams, of Oregon, were authorized to meet the Commissioners appointed, or to be appointed, on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which should come before them ;

" And whereas that meeting and discussion have taken place, and the said mode of settlement has been agreed upon ;

" Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby appoint the said Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer R. Hoar, and George H. Williams, jointly and severally, Plenipotentiaries for and in behalf of the United States, and do authorize them, and any or either of them, to conclude and sign any Treaty or Treaties touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate, if such advice and consent be given.

" In witness whereof I have caused the seal of the United States to be hereunto affixed.

" Given under my hand at the City of Washington, the second day of May, in the year of Our Lord One thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

(Signed,) " U. S. GRANT.

" By the President :

(Signed,) " HAMILTON FISH, *Secretary of State.*"

This full-power was examined by the British Commissioners, and found satisfactory

The Joint High Commissioners determined that they would embody in a Protocol a statement containing an account of the negotiations upon the various subjects included in the Treaty, and they instructed the Joint Protocolists to prepare such an account in the order in which the subjects are to stand in the Treaty.

The Conference was adjourned to the 4th of May.

(Signed,) TENTERDEN.
J. C. BANCROFT DAVIS.

*36th Protocol of Conference between the High Commissioners on the part of Great Britain and the High Commissioners on the part of the United States of America.*

WASHINGTON, May 4, 1871.

The High Commissioners having met, the Protocol of the Conference held on the 3rd of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The statement prepared by the Joint Protocolists, in accordance with the request of the Joint High Commissioners at the last Conference, was then read as follows :—

*Statement.*

ARTICLES I TO XI.

At the Conference held on the 8th of March, the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States ; that what had occurred in Great Britain and her Colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain ; that the history of the "Alabama" and other cruizers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruizers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion ; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruizers and of their tenders ; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented ; that the cost to which the Government had been put in the pursuit of crusizers could easily be ascertained by certificates of Government accounting officers ; that in the hope of an amicable settlement no estimate was made of the indirect losses, without predjudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a

sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of international law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed; as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the "Alabama" and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, providing that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the "Alabama" claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective Conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

At the close of the Conference of the 14th of March the British Commissioners reserved several questions for the consideration of their Government.

At the Conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the "Alabama" claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrator

should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz. :

That a neutral Government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

*Secondly.* Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

*Thirdly.* To exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a tribunal of arbitration.

At the Conferences on the 6th, 8th, 9th, 10th, and 12th of April, the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the "Alabama" and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the Conference on the 13th of April, the Treaty Articles I to XI were agreed to.

## Articles XII to XVII.

At the Conference on the 4th March it was agreed to consider the subjects referred to the Joint High Commission by the respective Governments in the order in which they appeared in the correspondence between Sir Edward Thornton and Mr. Fish, and to defer the consideration of the adjustment of "all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country,', as described by Sir Edward Thornton in his letter of February 1, until the subjects in the previous letter should have been disposed of.

The American Commissioners said that they supposed that they were right in their opinion that British laws prohibit British subjects from owning slaves; they therefore inquired whether any claim for slaves, or for alleged property or interest in slaves, can or will be presented by the British Government, or in behalf of any British subject, under the Treaty now being negotiated, if there be in the Treaty no express words excluding such claims.

The British Commissioners replied, that by the law of England British subjects had long been prohibited from purchasing or dealing in slaves, not only within the dominions of the British Crown, but in any foreign country; and that they had no hesitation in saying that no claim on behalf of any British subject, for slaves or for any property or interest in slaves, would be presented by the British Government.

Referring to the paragraph in Sir Edward Thornton's letter of January 26th, relating to "the mode af settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America," the British Commissioners proposed that the Joint High Commission should consider the claims for injuries which the people of Canada had suffered from what were known as the Fenian raids.

The American Commissloners objected to this, and it was agreed that the subject might be brought up again by the British Commissioners in connection with the subjects referred to by Sir Edward Thornton in his letter of February 1.

At the conference on the 14th of April the Joint High Commission took into consideration the subjects mentioned by Sir Edward Thornton in that letter.

The British Commissioners proposed that a Commission for the consideration of these claims should be appointed, and that the Convention of 1853 should be followed as a precedent. This was agreed to, except that it was settled that there should be a third Commissioner instead of an Umpire.

At the Conference on the 15th of April, the Treaty Articles XII to XVII were agreed to.

At the Conference on the 26th of April the British Commissioners again brought before the Joint High Commission the claims of the people of Canada for injuries suffered from the Fenian raids. They said that they were instructed to present these claims, and to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of January 26, as subjects for the consideration of the Joint High Commission.

The American Commissioners replied that they were instructed to say that the Government of the United States did not regard these clnims as coming within the class of subjects indicated in that letter as subjects for the consideration of the Joint High Commission, and that they were without any authority from their Government to consider them. They therefore declined to do so.

The British Commissioners stated that, as the subject was understood not to be within the scope of the instructions of the American Commissioners, they must refer to their Government for further instructions upon it.

At the Conference on the 3rd May the British Commissioners stated that they were instructed by their Government to express their regret that the American Commissioners were without authority to deal with the question of the Fenian raids, and they inquired whether that was still the case.

The American Commissioners replied that they could see no reason to vary the reply formerly given to this proposal; that in their view the subject was not embraced in the scope of the correspondence between Sir Edward Thornton and Mr. Fish under either of the letters of the former; and that they did not feel justified in entering upon the consideration of any class of claims not contemplated at the time of the creation of the present Commission, and that the claims now referred to did not commend themselves to their favour.

The British High Commissioners said that under these circumstances they would not urge further that the settlement of these claims should be included in the present Treaty, and that they had the less difficulty in doing so as a portion of the claims were of a constructive and inferential character.

## Articles XVIII to XXV.

At the Conference on the 6th of March the British Commissioners stated that they were prepared to discuss the question of the Fisheries, either in detail or generally, so as either to enter into an examination of the respective rights of the two countries under the Treaty of 1818, and the general law of nations, or to approach at once the settlement of the question on a comprehensive basis.

The American Commissioners said, that with the view of avoiding the discussion of matters which subsequent negociation might render it unnecessary to enter into, they thought it would be preferable to adopt the latter course, and inquired what, in that case, would be the basis which the British Commissioners desired to propose.

The British Commissioners replied, that they considered that the Reciprocity Treaty of 5th June, 1854, should be restored in principle.

The American Commissioners declined to assent to a renewal of the former Reciprocity Treaty.

The British Commissioners then suggested that, if any considerable modification were made in the Tariff arrangements of that Treaty, the coasting trade of the United States and of Her Britannic Majesty's possessions in North America should be reciprocally thrown open, and that the navigation of the River St. Lawrence and of the Canadian Canals should be also thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and objected to a negotiation on the basis of the Reciprocity Treaty. They said that that Treaty had proved unsatisfactory to the people of the United States, and consequently had been terminated by notice from the Government of the United States, in pursuance of its provisions. Its renewal was not in their interest, and would not be in accordance with the sentiments of their people. They further said that they were not at liberty to treat of the opening of the coasting trade of the United States to the subjects of Her Majesty residing in her possessions in North America. It was agreed that the questions relating to the navigation of the River St. Lawrence, and of the Canadian Canals, and to other commercial questions affecting Canada, should be treated by themselves.

The subject of the Fisheries was further discussed at the Conferences on the 7th, 20th, 22nd, and 25th of March. The American Commissioners stated that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase, for a sum of money, the right to enjoy, in perpetuity, the use of these inshore fisheries in common with British fishermen, and mentioned 1,000,000 dollars as the sum they were prepared to offer. The British Commissioners replied that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish the produce of the British fisheries, did not form a part; adding that any arrangement for the acquisition by purchase of the inshore fisheries in perpetuity was open to grave objection.

The American Commissioners inquired whether it would be necessary to refer any arrangement for purchase to the Colonial or Provincial Parliaments.

The British Commissioners explained that the fisheries within the limits of maritime jurisdiction were the property of the several British Colonies, and that it would be necessary to refer any arrangement which might affect Colonial property or rights to the Colonial or Provincial Parliaments; and that legislation would also be required on the part of the Imperial Parliament. During these discussions the British Commissioners contended that these inshore fisheries were of great value, and that the most satisfactory arrangement for their use would be a reciprocal tariff arrangement, and reciprocity in the coasting trade; and the American Commissioners replied that their value was over-estimated; that the United States desired to secure their enjoyments, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation; and that they could hold out no hope that the Congress of the United States would give its consent to such a tariff

arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries; but that, inasmuch as one branch of Congress had recently, more than once, expressed isself in favour of the abolition of duties on coal and salt, they would propose that coal, salt, and fish be reciprocally admitted free; and that, inasmuch as Congress had removed the duty from a portion of the lumber heretofore subject to duty, and as the tendency of legislation in the United States was towards the reduction of taxation and of duties in proportion to the reduction of the public debt and expenses, shey would further propose that lumber be admitted free from duty from and after the 1st of July, 1874, subject to the approval of Congress, which was necessary on all questions affecting import duties.

The British Commissioners, at the Conference on the 17th of April, stated that they had referred this offer to their Government, and were instructed to inform the American Commissioners that it was regarded as inadequate, and that Her Majesty's Government considered that free lumber should be granted at once, and that the proposed tariff concessions should be supplemented by a money payment.

The American Commissioners then stated that they withdrew the proposal which they had previously made of the reciprocal free admission of coal, salt, and fish, and of lumber after July 1, 1874; that that proposal had been made entirely in the interest of a peaceful settlement, and for the purpose of removing a source of irritation and of anxiety; that its value had been beyond the commercial or intrinsic value of the rights to have been acquired In return; and that they could not consent to an arrangement on the basis now proposed by the British Commissioners; and they renewed their proposal to pay a money equivalent for the use of the inshore fisheries. They further proposed that, in case the two Governments should not be able to agree upon the sum to be paid as such an equivalent, the matter should be referred to an impartial Commission for determination.

The British Commissioners replied that this proposal was one on which they had no instructions, and that it would not be possible for them to come to any arrangement except one for a term of years and involving the concession of free fish and fish-oil by the American Commissioners; but that if free fish and fish-oil were conceded, they would inquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment.

The American Commissioners replied that they were willing, subject to the action of Congress, to concede free fish and fish-oil as an equivalent for the use of the inshore fisheries, and to make the arrangement for a term of years; that they were of opinion that free fish and fish-oil would be more than an equavalent for those fisheries, but that they were also willing to agree to a reference to determine that question and the amount of any money payment that might be found necessary ta complete an equivalent, it being understood that legislation would be needed before any payment could be made.

The subject was further discussed in the Conferences of April 18 and 19, and the British Commissioners having referred the last proposal to their Government and received instructions to accept it, the Treaty Articles XVIII to XXV were agreed to at the Conference on the 22nd of April.

## Articles XXVI to XXXIII.

At the Conference on the 6th of March the British Commissioners proposed that the Reciprocity Treaty of June 5, 1854, should be restored in principle, and that, if any considerable modifications in the Tariff arrangements in force under it were made, the coasting trade of the United States and of Her Britannic Majesty's Possessions in North America should be reciprocally thrown open, and that the navigation of the River St. Lawrence and of the Canadian Canals should be thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and in the subsequent negociations the question of the Fisheries was treated by itself.

At the Conference on the 17th March the Joint High Commission considered the subject of the American improvement of the navigation of the St. Clair Flats.

At the Conference on the 18th March the questions of the navigation of the River St. Lawrence and the Canals and the other subjects connected therewith were taken up.

The American Commissioners proposed to take into consideration the question of transit of goods in bond through Canada and the United States, which was agreed to.

The British Commissioners proposed to take into consideration the question of opening the coasting trade of the lakes reciprocally to each party, which was declined.

On the proposal of the British Commissioners it was agreed to take the question of transhipment into consideration.

The British Commissioners proposed to take into consideration the reciprocal registration of vessels, as between the Dominion of Canada and the United States, which was declined.

At the Conference on the 23rd March the transhipment question was discussed and postponed for further information on the motion of the American Commissioners.

The transit question was discussed, and it was agreed that any settlement that might be made should include a reciprocal arrangement in that respect for the period for which the Fishery Articles should be in force.

The question of the navigation of the River St. Lawrence and the Canals was taken up.

The British Commissioners stated that they regarded the concession of the navigation of Lake Michigan as an equivalent for the concession of the navigation of the River St. Lawrence.

As to the Canals they stated that the concession of the privilege to navigate them in their present condition, on terms of equality with British subjects, was a much greater concession than the corresponding use of the Canals offered by the United States.

They further said that the enlargement of the Canals would involve the expenditure of a large amount of money, and they asked what equivalent the American Commissioners proposed to give for the surrender of the right to control the tolls for the use of the Canals, either in their present state or after enlargement.

The American Commissioners replied that, unless the Welland Canal should be enlarged so as to accommodate the present course of trade, they should not be disposed to make any concessions ; that in their opinion the citizens of the United States could now justly claim to navigate the River St. Lawrence in its natural state, ascending and descending, from the 55th parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea; and they could not concede that the navigation of Lake Michigan should be given or taken as an equivalent for that right; and they thought that the concession of the navigation of Lake Michigan and of the Canals offered by them was more than an equivalent for the concessions as to the Canadian Canals which were asked. They proposed, in connection with a reciprocal arrangement as to transit and transhipment, that Canada should agree to enlarge the Wellond and St. Lawrence Canals, to make no discriminating tolls, and to limit the tolls to rates sufficient to maintain the Canals, pay a reasonable interest on the cost of construction and enlargement, and raise a sinking fund for the repaying within a reasonable time the cost of enlargement ; and that the navigation of the River St. Lawrence, the Canadian Canals, the Canals offered by the United States, and Lake Michigan should be enjoyed reciprocally by citizens of the United States and by British subjects. This proposal was declined by the British Commissioners, who repeated that they did not regret the equivalent offered by the United States as at all commensurate with the concessions asked from Great Britain.

At the Conference on the 27th of March the proposed enlargement of the Canadian Canals was further discussed. It was stated on the part of the British Commissioners that the Canadian Government were now considering the expediency of enlarging the capacity of the Canals on the River St. Lawrence, and had already provided for the enlargement of the Welland Canal, which would be undertaken without delay.

The subject of the export duty in New Brunswick on American lumber floated down the River St. John was proposed for consideration by the American Commissioners.

At the Conference on the 22nd of April the British Commissioners proposed that the navigation of Lake Michigan should be given in exchange for the navigation of the River St. Lawrence; and that Her Majesty's Government should agree to urge upon the Dominion of Canada to give to the citizens of the United States the use of the Canadian Canals on terms of equality with British subjects; and that the Government of the United States should agree to urge upon the several States to give to British subjects the use of the several State Canals on terms of equality with citizens of the United States. They also proposed, as part of the arrangement, a reciprocal agreement as to transit and transhipment, and that the Government of Great Britain should urge upon New Brunswick not to impose export duties on the lumber floated down the River St. John for shipment to the United States.

The American Commissioners repeated their views as to the navigation of the River St. Lawrence in its natural state.

The British Commissioners replied that they could not admit the claims of American citizens to navigate the River St. Lawrence as of right; but that the British Government had no desire to exclude them from it. They however pointed out that there were certain rivers running through Alaska which should on like grounds be declared free and open to British subjects, in case the River St. Lawrence should be declared free.

The American Commissioners replied that they were prepared to consider that question. They also assented to the arrangement as to the Canals which was proposed by the British Commissioners, limiting it, as regarded American Canals, to the Canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the British and American possessions. They likewise agreed to give the right of navigating Lake Michigan for a term of years. They desired, and it was agreed, that the transhipment arrangement should be made dependent upon the non-existence of discriminating tolls or regulations on the Canadian Canals, and also upon the abolition of the New Brunswick export duty on American lumber intended for the United States. It was also agreed that the right of carrying should be made dependent upon the non-imposition of export duties on either side on the goods of the other party passing in transit.

The discussion of these subjects was further continued at the Conferences of the 24th, 25th, and 26th of April, and the Treaty Articles XXVI to XXXVIII were agreed to at the Conference on the 3rd of May.

In the course of these discussions the British Commissioners called attention to the question of the survey of the boundary line along the forty-ninth parallel, which still remained unexecuted from the Lake of the Woods to the Rocky Mountains, and to which reference had been made in the President's Message.

The American Commissioners stated that the survey was a matter for administrative action, and did not require to be dealt with by a Treaty provision. The United States' Government would be prepared to agree with the British Government for the appointment of a Boundary Survey Commission, in the same manner as had been done in regard to the remainder of the boundary along the forty-ninth parallel as soon as the legislative appropriations and other necessary arrangements could be made.

## Articles XXXIV to XLII.

At the Conference on the 15th of March the British Commissioners stated that it was proposed that day to take up the North-West Water Boundary question; that the difference was one of long standing, which had more than once been the subject of negociations between the two Governments, and that the negotiators had, in January, 1869, agreed upon a Treaty. They then proposed that an arbitration of this question should be made upon the basis of the provisions of that Treaty.

The American Commissioners replied that, though no formal vote was actually taken upon it, it was well understood that that Treaty had not been favorably regarded by the Senate. They declined the proposal of the British Commissioners, and expressed their wish that an effort should be made to settle the question in the Joint High Commission.

The British Commissioners assented to this, and presented the reasons which induced them to regard the Rosario Straits as the channel contemplated by the Treaty of June 15, 1846.

The American Commissioners replied, and presented the reasons which induced them to regard the Haro Channel as the channel contemplated by that Treaty. They also produced in support of their views some original correspondence of Mr. Everett with his Government, which had not been alluded to in previous discussions of the question.

The British Commissioners replied that they saw in that correspondence no reason to induce them to change the opinion which they had previously expressed. They then asked whether the American Commissioners had any further proposal to make.

The American Commissioners replied that, in view of the position taken by the British Commissioners, it appeared that the Treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each Party understood at that time the construction which the other Party puts upon the language whose interpretation is in dispute; they therefore proposed to abrogate the whole of that part of the Treaty, and rearrange the boundary line which was in dispute before that Treaty was concluded.

The British Commissioners replied that the proposal to abrogate a Treaty was one of a serious character, and that they had no instructiens which would enable them to entertain it; and at the Conference on the 20th of March the British Commissioners declined the proposal.

At the Conference on the 19th of April the British Commissioners proposed to the American Commissioners to adopt the Middle Channel (generally known as the Douglas Channel) as the channel through which the boundary line should be run, with the understanding that all the channels through the Archipelago should be free and common to both Parties.

The American Commissioners declined to entertain that proposal. They proposed that the Joint High Commission should recognize the Haro Channel as the channel intended by the Treaty of June 15, 1846. with a mutual agreement that no fortifications should be erected by either Party to obstruct or command it, and with proper provisions as to any existing proprietary rights of British subjects in the Island of San Juan.

The British Commissioners declined this proposal, and stated that, being convinced of the justice of their view of the Treaty, they could not abandon it except after a fair decision by an impartial Arbitrator. They therefore renewed their proposal for a reference to arbitration, and hoped that it would be seriously considered.

The American Commissioners replied that they had hoped that their last proposal would be accepted. As it had been declined, they would, should the other questions between the two Governments be satisfactorily adjusted, agree to a reference to arbitration to determine whether the line should run through the Haro Channel or through the Rosario Straits, upon the condition that either Government should have the right to include in the evidence to be considered by the Arbitrators such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases. This condition was agreed to.

The British Commissioners proposed that the Arbitrator should have the right to draw the boundary through an intermediate channel. The American Commissioners declined this proposal, stating that they desired a decision, not a compromise.

The British Commissioners proposed that it should be declared to be the proper construction of the Treaty of 1846 that all the channels were to be open to navigation by both Parties. The American Commissioners stated that they did not so construe the Treaty of 1846, and therefore could not assent to such a declaration.

The discussion of this subject was continued during this Conference, and in the Conference of the 22nd of April the Treaty Articles XXXIV to XLII were agreed to.

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The Joint High Commissioners approved this Statement, and directed it to be entered in the Protocol.

The Conference was adjourned to the 6th of May.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

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*37th Protocol of the Conference between the High Commissioners on the part of Great Britain and the High Commiss-oners on the part of the United States of America.*

*Washington, May 6, 1871.*

The High Commissioners having met, the Protocol of the Conference held on the 4th of May was read and confirmed.

Lord de Grey said that, as the Joint High Commission would not meet again after to-day, except for the purpose of signing the Treaty, he desired, on behalf of himself and his colleagues, to express their high appreciation of the manner in which Mr. Fish and his American colleagues had, on their side, conducted the negotiations. It had been most gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about a settlement, equally honourable and just to both countries, of the various questions of which it had been their duty to treat, and the British Commissioners would always retain a grateful recollection of the fair and friendly spirit which the American Commissioners had displayed.

Mr. Fish, in behalf of the American Commissioners, said that they were gratefully sensible of the friendly words expressed by Lord de Grey, and of the kind spirit which had prompted them. From the date of the first Conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach a settlement worthy of the two Powers who had committed to this Joint High Commission the treatment of various questions of peculiar interest, complexity, and delicacy. His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of a Treaty which it was hoped would receive the approval of the people of both countries, and would prove the foundation of a cordial and friendly understanding between them for all time to come.

Mr. Fish further said that he was sure that every member of the Joint High Commission would desire to record his appreciation of the ability, the zeal, and the unceasing labour which the Joint Protocolists had exhibited in the discharge of their arduous and responsible duties, and that he knew that he only gave expression to the feelings of the Commissioners in saying that Lord Tenterden and Mr. Bancroft Davis were entitled to, and were requested to accept, the thanks of the Joint High Commission for their valuable services, and the great assistance which they had rendered with unvarying obligingness to the Commission.

Lord de Grey replied, on behalf of the British Commissioners, that he and his colleagues most cordially concurred in the proposal made by Mr. Fish, that the thanks of the Joint High Commission should be tendered to Mr. Bancroft Davis and Lord Tenterden for their valuable services as Joint Protocolists. The British Commissioners were also quite as sensible as their American colleagues of the great advantage which the Commission had derived from the assistance which those gentlemen had given them in the conduct of the important negotiations in which they had been engaged.

Monday, the 8th of May, was appointed fot the signature of the Treaty.

(Signed) TENTERDEN,
J. C. BANCROFT DAVIS.

## DESPATCH FROM HER MAJESTY'S HIGH COMMISSIONERS, WITH COPY ANNEXED OF THE TREATY SIGNED AT WASHINGTON, MAY 8, 1871.

*Her Majesty's High Commissioners to Earl Granville.—(Received May 21.)*

WASHINGTON, MAY 8, 1871

My Lord,—We have the honour to report that we have this day signed the Treaty with the United States' High Commissioners at the State Department.

Copies of the Treaty are inclosed. The original will be conveyed to London by Lord Tenterden.

As the duties of Her Majesty's High Commission have now been completed, we desire to bring to your Lordship's notice in a very special manner the valuable assistance which we have received from Lord Tenterden throughout our negotiations. We cannot speak too highly of the remarkable knowledge and ability which he has displayed, or of the zeal with which he has devoted himself to his duties, and we feel ourselves under the greatest obligations to him.

We further wish to place upon record our strong appreciation of the services which have been rendered to us by Mr. Henry Howard, and our sense of the great advantage which we have derived from them.

Our thanks are also due to Mr. H. S. Northcote, of whose special aptitude for business we have formed a high opinion, as well as to Viscount Goderich, who has rendered us most willing assistance.

We have, &c.

(Signed) CE GREY AND RIPON.
STAFFORD H. NORTHCOTE.
EDWD. THORNTON.
JOHN A. MACDONALD.
MOUNTAGUE BERNARD.

INCLOSURE.

*Treaty between Her Majesty and the United States of America. Signed at Washington May 8, 1871.*

HER Britannic Majesty and the United States of America, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed their respective Plenipotentiaries, that is to say :—

Her Britannic Majesty on her part has appointed as Her High Commissioners and Plenipotentiaries, the Right Honourable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, &c., &c. ; the Right Honourable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honourable Privy Council, a Member of Parliament, a Companion of the Most Honourable Order of the Bath, &c,, &c. ; Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America ; Sir John Alexander Macdonald, Knight Commander of the Most Honourable Order of the Bath, a Member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney-General of Her Majesty's Dominion of Canada ; and Mountague Bernard, Esq., Chichele Professor of International Law in the University of Oxford ;

And the President of the United States has appointed on the part of the United States as Commissioners in a Joint High Commission and Plenipotentiaries, Hamilton Fish, Secretary of State; Robert Cumming Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts; and George Henry Williams, of Oregon;

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims:

And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the "Alabama" and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically know as the "Alabama" claims, shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators to be appointed in the following manner, that is to say: one shall be named by Her Britannic Majesty; one shall be named by the President of the United States; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, Her Britannic Majesty, or the President of the United States, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ARTICLE II.

The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the arbitration.

ARTICLE III.

The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of theratifications of this Treaty.

ARTICLE IV.

Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence, so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy; such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V.

It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

RULES.

A neutral Government is bound—

First:—To use diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruize or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly:—Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly :—To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Goverment, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers and to invite them to accede to them.

ARTICLE VII.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Abitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it ; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

The award shall be in duplicate, one copy whereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States for his Government.

ARTICLE VIII.

Each Government shall pay its own Agent and provide for the proper remuneration of the Counsel employed by it, and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE IX.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE X.

In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

The Board of Assessors shall be constituted as follows : One member thereof shall be named by Her Britannic Majesty, one member thereof shall be named by the President of the United States, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy ; and in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

As soon as possible after such nominations the Board of Assessors shall be organized in Washington with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and of the United States respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government as Counsel or Agent. A majority of the Assessors in each case shall be sufficient for a decision.

The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

Every claim shall be presented to the Assessors within six months from the day of their first meeting ; but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report ; if futher claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting ; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Representative of Her Britannic Majesty at Washington, and one copy thereof to the Secretary of State of the United States.

All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

The Board of Assessors may employ such clerks as they shall think necessary.

The expenses of the Board of Assessors shall be borne eqally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

## Article XI.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to ; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

## Article XII.

The High Contracting Parties agree that all claims on the part of Corporations, Companies, or private individuals, citizens of the United States, upon the Government of

Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the 13th April, 1861, and the 9th of April, 1865, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this Treaty; and all claims, with the like exception, on the part of Corporations, Companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner, that is to say:—One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appintment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named, shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of Her Britannic Majesty, and of the United States, repsectively; and such declaration shall be entered on the record of their proceedings.

### Article XIII.

The Commissioner shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of, or in answer to any claim; and to hear, if required, one person on each side, on behalf of each Government, as Counsel or Agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its Agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

### Article XIV.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners; and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ARTICLE XV.

All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Article XVI of this Treaty.

ARTICLE XVI.

The Commissioners shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and Agent or Counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commissioners; provided always that such deduction shall not exceed the rate of 5 per cent. on the sums so awarded.

ARTICLE XVII.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this Treaty upon either Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec Nova Scotia and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

It is agreed that the places designated by the Commissioners appointed under the first Article of the Treaty between Great Britain and the United States, concluded at Washington on the 5th of June, 1854, upon the coasts of the United States and Her Britannic Majesty's dominions, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of Her Britannic Majesty and of the United States as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

ARTICLE XXI.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

ARTICLE XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

ARTICLE XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the city of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

ARTICLE XXIV.

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV.

The Commissioners shall keep an accurate record and correct Minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

ARTICLE XXVI.

The navigation of the River St. Lawrence, ascending and descending, from the forty fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall for ever remain free and open for the purposes

of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation.

The navigation of the Rivers Yukon, Porcupine, and Stikine, ascending and descending from, to, and into the sea, shall for ever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

ARTICLE XXVII.

The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of Her Brittanic Majesty shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States.

ARTICLE XXVIII.

The navigation of Lake Michigan shall also, for the term of years mentioned in Article XXXIII of this Treaty, be free and open for the purposes of commerce to the subjects of Her Britannic Majesty, subject to any laws and regulations of the United States or of the States bordering thereon not inconsistent with such privilege of free navigation.

ARTICLE XXIX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, goods, wares, or merchandize arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may from time to time be specially designated by the President of the United States, and destined for Her Britannic Majesty's Possessions in North America, may be entered at the proper Customs-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandize may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States.

It is further agreed that for the like period goods, wares, or merchandize arriving at any of the ports of Her Britannic Majesty's Possessions in North America and destined for the United States may be entered at the proper Custom-house and conveyed in transit, without the payment of duties, through the said Possessions, under such rules and regulations, and conditions for the protection of the revenue, as the Governments of the said Possessions may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandize may be conveyed in transit, without payment of duties, from the United States through the said Possessions to other places in the United States, or for export from ports in the said Possessions.

ARTICLE XXX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of

duty, goods, wares, or merchandize from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the the same, to another port or place within the territory of the United States as aforesaid : Provided, that a portion of such transportation is made through the Dominion of Canada by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

Citizens of the United States may for the like period carry in United States' vessels, without payment of duty, goods, wares, or merchandize from one port or place within the Possessions of Her Britannic Majesty in North America, to another port or place within the said Possessions : Provided, that a portion of such transportation is made through the territory of the United States by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of Her Britannic Majesty.

The Government of the United States further engages not to impose any export duties on goods, wares, or merchandize carried under this Article through the territory of the United States ; and Her Majesty's Government engages to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandize carried under this Article ; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this Article in favour of the subjects of Her Britannic Majesty.

The Government of the United States may suspend the right of carrying granted in favour of the subjects of Her Britannic Majesty under this Article in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII.

### Article XXXI.

The Government of Her Britannic Majesty further engages to urge upon the Parliament of the Dominion of Canada and the Legislature of New Brunswick, that no export duty, or other duty, shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river St. John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick. And, in case any such export or other duty continues to be levied after the expiration of one year from the date of the exchange of the ratifications of this Treaty, it is agreed that the Government of the United States may suspend the right of carrying herein before granted under Article XXX of this Treaty for such period as such export or other duty may be levied.

### Article XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect ; but the omission to make provision by law to give it effect, by either of the Legislative Bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

### Article XXXIII.

The foregoing Articles XVIII to XXV inclusive, and Article XXX of this Treaty shall take effect as soon as the laws required to carry them into operation shall have been

passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation, and further, until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.

ARTICLE XXXIV.

Whereas it was stipulated by Article I of the Treaty concluded at Washington on the 15th of June, 1846, between Her Britannic Majesty and the United States, that the line of boundary between the territories of the United States and those of Her Britannic Majesty, from the point on the forty-ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fuca Straits, to the Pacific Ocean;" and whereas the Commissioners appointed by the two High Contracting Parties to determine that portion of the boundary which runs southerly through the middle of the channel aforesaid were unable to agree upon the same; and whereas the Government of Her Britannic Majesty claims that such boundary line should, under the terms of the Treaty above recited, be run through the Rosario Straits, and the Government of the United States claims that it should be run through the Canal de Haro, it is agreed that the respective claims of the Government of Her Britannic Majesty and of the Government of the United States shall be submitted to the arbitration and award of His Majesty the Emperor of Germany, who, having regard to the above-mentioned Article of the said Treaty, shall decide thereupon, finally and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15, 1846.

ARTICLE XXXV.

The award of His Majesty the Emperor of Germany shall be considered as absolutey final and conclusive; and full effect shall be given to suchaward without any objection, evasion, or delay whatsoever. Such decision shall be given in writing and dated; it shall be in whatsoever form His Majesty may choose to adopt; it shall be delivered to the Representatives or other public Agents of Great Britain and of the United States respectively, who may be actually at Berlin, and shall be considered as operative from the day of the date of the delivery thereof.

ARTICLE XXXVI.

The written or printed case of each of the two Parties, accompanied by the evidence offered in support of the same, shall be laid before His Majesty the Emperor of Germany within six months from the date of the exchange of the ratifications of this Treaty, and a copy of such case and evidence shall be communicated by each Party to the other, through their respective Representatives at Berlin.

The High contracting Parties may include in the evidence to be considered by the Arbitrator, such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases.

After the written or printed case shall have been communicated by each Party to the other, each Party shall have the power of drawing up and laying before the Arbitrator a second and definitive statement, if it think fit to do so, in reply to the case of the other Party so communicated, which definitive statement shall be so laid before the Arbitrator, and also be mutually communicated in the same manner as aforesaid, by each

party to thr other, within six months from the date of laying the first statement of the case before the Arbitrator.

ARTICLE XXXVII.

If, in the case submitted to the Arbitrator, either Party shall specify or allude to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either party may call upon the other, through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one counsel or agent for each Party, in relation to any matter, and at such time, and in such manner, as he may think fit.

ARTICLE XXXVIII.

The Representatives, or other public Agents of Great Britain and of the United States at Berlin respectively, shall be considered as the Agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications, and give all his notices, to such Representatives or other public Agents, who shall represent their respective Governments generally in all matters connected with the Arbitration.

ARTICLE XXXIX.

It shall be competent to the Arbitrator to proceed in the said Arbitration, and all matters relating therto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both Agents, and either orally or by written discussion, or otherwise.

ARTICLE XL.

The Arbitrator may, if he think fit, appoint a Secretary or Clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This, and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

ARTICLE XLI.

The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

ARTICLE XLII.

The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

ARTICLE XLIII.

The present Treaty shall be duly ratified by Her Britannic Majesty, and by the President of the United States of America, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged either at London or at Washington within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, the eighth day of May, in the year of Our Lord one thousand eight hundred and seventy-one.

(L.S.) De Grey and Ripon.
(L.S.) Stafford H. Northcote.
(L.S.) Edwd. Thornton.
(L.S.) John A. Macdonald.
(L.S.) Mountague Bernard.
(L.S.) Hamilton Fish.
(L.S.) Robt. C. Schenck.
(L.S.) Samuel Nelson.
(L.S.) Ebenezer Rockwood Hoar.
(L.S.) Geo. H. Williams.

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*Mr. Hammond to the Under Secretary of State, Colonial Office.*

(Copy.—No. 155.)

Foreign Office,
May 26th, 1871.

Sir,—I am directed by Earl Granville to transmit to you, for the information of the Earl of Kimberley, a copy of a despatch from Sir E. Thornton, enclosing copies of his correspondence with Mr. Fish relative to the immediate application of the stipulations of the Fishery Treaty pending its ratification.

I am, &c.,
E. Hammond.

The Under Secretary of State,
Colonial Office.

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*Sir E. Thornton to Earl Granville.*

(Copy.—No. 155.)

Washington, May 12th, 1871.

My Lord,—With reference to my despatches, Nos. 146 and 147, of the 8th instant, I have the honor to enclose copy of a note addressed to me by Mr. Fish, expressing the hope entertained by the Government of the United States that Her Majesty's Government will urge the Governments of the Dominion of Canada, of Prince Edward Island, and of Newfoundland, to consent that American fishermen should be allowed to fish in the waters of the above Colonies during the coming season.

Your Lordship will observe that at the beginning of the second paragraph of the draft of the note which I forwarded in my despatch, No. 146, the following words have been added: "The Government of the United States would be prepared at the same time "to admit British subjects to the right of fishing in the waters of the United States "specified in the Treaty; but * * * "

I also enclose copy of my answer to Mr. Fish, and hope your Lordship will find that his note, with the addition above mentioned and my answer, are in accordance with the terms your Lordship's telegram of 9th instant, transmitted through Earl de Grey.

His Lordship has seen both the enclosed notes and approves of their contents.

I have, &c.,
Edward Thornton.

The Earl Granville, K.G., &c., &c., &c.

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*Mr. Fish to Sir E. Thornton.*

(Copy.)

DEPARTMENT OF STATE,
WASHINGTON, May 8th, 1871.

SIR,—As several articles of the Treaty which has been signed this day, relating to the admission of citizens of the United States to fish within the Territorial Waters of Her Britannic Majesty on the coasts of Canada, Prince Edward Island, and Newfoundland, cannot come into full operation until the legislation contemplated in that instrument shall have taken place, and as it seems to be in accordance with the interests of both Governments in furtherance of the objects and spirit of the Treaty, that the citizens of the United States should have the enjoyment of that liberty during the present season, I am directed by the President to express to you his hope that Her Majesty's Government will be prepared in the event of the ratification of the Treaty, to make on their own behalf, and to urge the Governments of the Dominion of Canada, of Prince Edward Island and of Newfoundland, to make for the season referred to within their respective jurisdictions such relaxations and regulations as it may respectively be in their power to adopt, with a view to the admission of American fishermen to the liberty which it is proposed to secure to them by the Treaty. The Government of the United States would be prepared at the same time to admit British subjects to the right of fishing in the Waters of the United States specified in the Treaty; but as the admission into the United States, free of duty, of any articles which are by law subject to duty cannot be allowed without the sanction of Congress, the President will, in case the above suggestion meets with the views of the British Government, recommend and urge upon Congress, at their next Session, that any duties which may have been collected on and after the first day of July next, on fish oil and fish (except fish of the Inland Lakes and of the Rivers falling into the same, and except fish preserved in oil) the produce of the fisheries of the Dominion of Canada and of Prince Edward Island, shall be returned and refunded to the parties paying the same, if a similar arrangement is made with respect to the admission into the British Possessions of fish oil and fish (with the like exception) being the produce of the Fisheries of the United States.

I have, &c.,

HAMILTON FISH.

Sir E. Thornton, K.C.B., &c., &c., &c.

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(Copy.)

*Sir E. Thornton to Mr. Fish.*

WASHINGTON,
May 9th, 1871.

SIR,—I have the honor to acknowledge the receipt of your note of yesterday's date, and to inform you in reply that I have been authorized by Earl Granville to state that in the event of the ratification of the Treaty signed yesterday, Her Majesty's Government will be prepared to recommend to the Governments of the Dominion of Canada, of Prince Edward Island, and of Newfoundland, that the provisional arrangement proposed in your note above mentioned with regard to the right of fishing by United States citizens on the coasts of those British possessions, and by British subjects in the waters of the United States, described in Article XIX of the Treaty, shall take effect during the coming season, on the understanding that the ultimate decision of this question must rest with the above mentioned Colonial Governments, who would be asked to grant the immediate and certain right of fishing within the territorial waters of those colonies, whilst the return of the import duties on fish from the 1st of July next, promised by the United States, is prospective and contingent on the action of Congress.

I have, &c.,

EDWARD THORNTON.

The Honorable Hamilton Fish.

(Copy—Canada—No. 445.)

*The Secretary of State for the Colonies to the Governor General.*

DOWNING STREET,
20th June, 1871.

MY LORD,—In accordance with the strong wish expressed by the Dominion Government, that a representation should be made to the United States with reference to the losses inflicted on Canada by the Fenian raids; Her Majesty's Government instructed the British High Commissioners to bring the claims arising out of those raids before the Joint High Commission.

Your Lordship will observe from the Protocols of Conferences, copies of which were transmitted to you in my despatch No. 444 of the 17th inst., that the American Commissioners declined to entertain the proposal made by the Commissioners to include these claims in the Treaty.

Her Majesty's Government were well aware of the serious difficulties in the way of settling this question, and they could not, therefore, feel surprised at this result. At the same time, it was with much regret that they acquiesced in the omission of these claims from the general settlement of outstanding questions between Great Britain and the United States.

But it seemed to them evident that the British Commissioners were right in thinking that there was no reasonable probability that by further pressing the point an agreement would be come to upon it with the American Commissioners, and when the choice lay between the settlement of all the other differences between the two countries on terms which Her Majesty's Government believed to be honorable to both, and beneficial alike to Canada and to the rest of the Empire, and the frustration of all hope of bringing the negotiations to a satisfactory issue, they could not hesitate as to the course which it was their duty to take.

I have, &c.,
(Signed) KIMBERLEY.

Governor General, The Right Honorable
Lord Lisgar, G.C.B., G.C.M.G.,
&c., &c., &c.

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(Copy—No. 149.)

*The Governor General to the Secretary of State for the Colonies.*

CACOUNA,
August 15th, 1871.

MY LORD,—With reference to Your Lordships despatch No. 444, of the 17th June, which I duly referred to the Privy Council of the Dominion; I have the honor to transmit herewith the report of a Committee of that body, containing their views on the subject of the Treaty of Washington, in so far as it affects the interests of Canada.

I have, &c.,
(Signed) LISGAR.

The Right Honorable,
The Earl of Kimberley,
&c., &c., &c.

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(No. 444.)

*Copy of a Report of a Committee of the Privy Council, dated 28th July, 1871, submitted to His Excellency the Governor General.*

The Committee of the Privy Council have had under their consideration the Earl of Kimberley's despatch to Your Excellency, dated the 17th June ult., transmitting copies of the Treaty signed at Washington on the 8th May last, by the Joint High Commissioners, and which has since been ratified by Her Majesty, and by the United States of America; of the instructions to Her Majesty's High Commissioners, and of the No. 445. protocols of the Conferences held by the Commission; and likewise the Earl of Kimberley's despatch of the 20th June ultimo, explaining the failure of Her Majesty's Government to obtain the consideration by the United States Commissioners of the claims of Canada for the losses sustained owing to the Fenian raids of 1866 and 1870. The Committee of the Privy Council have not failed to give their anxious consideration to the important subject discussed in the Earl of Kimberley's despatches, and they feel assured that they will consult the best interests of the Empire, by stating frankly for the information of Her Majesty's Government the result of their deliberations, which they believe to be in accordance with public opinion in all parts of the Dominion. The Committee of the Privy Council readily admit that Canada is deeply interested in the maintenance of cordial relations between the Republic of the United States, and the British Empire, and they would therefore have been prepared without hesitation to recommend the Canadian Parliament to co-operate in procuring an amicable settlement of all differences likely to endanger the good understanding between the two Countries. For such an object they would not have hesitated to recommend the concession of some valuable rights, which they have always claimed to enjoy under the Treaty of 1818, and for which, as the Earl of Kimberley observes, Her Majesty's Government have always contended, both Governments having acted on the interpretation given to the Treaty in question by high legal authorities. The general dissatisfaction which the publication of the Treaty of Washington has produced in Canada, and which has been expressed with as much force in the Agricultural Districts of the West, as in the Maritime Provinces, arises chiefly from two causes.

1st. That the principal cause of difference between Canada and the United States has not been removed by the Treaty, but remains a subject for anxiety.

2nd. That a cession of territorial rights of great value has been made to the United States, not only without the previous assent of Canada, but contrary to the expressed wishes of the Canadian Government.

The Committee of the Privy Council will submit their views on both those points for the information of Her Majesty's Government, in the hope that by means of discussion, a more satisfactory understanding between the two Governments may be arrived at. The Earl of Kimberley has referred to the rules laid down in Article VI of the Treaty of Washington, as to the international duties of neutral Governments, as being of special importance to the Dominion, but the Committee of the Privy Council, judging from past experience, are much more apprehensive of misunderstanding, owing to the apparent difference of opinion between Canada and the United States, as to the relative duties of friendly States in a time of peace. It is unnecessary to enter into any lengthened discussion of the conduct of the United States during the last six or seven years, with reference to the organization of considerable numbers of the citizens of those states under the designation of Fenians. The views of the Canadian Government on this subject are in possession of Her Majesty's Government, and it appears from the proctocol of conference between the High Commissioners, that the British Commissioners presented the claims of the people of Canada, and were instructed to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton, in his letter of 26th January last, as subjects for the consideration of the Joint High Commissioners. The Earl of Kimberley states that it was with much

regret that Her Majesty's Government acquiesced in the omission of these claims from the general settlement of outstanding questions between Great Britain and the United States, and the Committee of the Privy Council, while fully participating in that regret, must add that the fact that this Fenian organization is still in full vigour, and that there seems no reason to hope that the United States Government will perform its duty as a friendly neighbour any better in the future than in the past, leads them to entertain a just apprehension that the outstanding subject of difference with the United States is the one of all others which is of special importance to the Dominion. They must add that they are not aware that during the existence of this Fenian organization, which for nearly seven years has been a cause of irritation and expense to the people of Canada, Her Majesty's Government have made any vigorous effort to induce the Government of the United States to perform its duty to a neighbouring people who earnestly desire to live with them on terms of amity, and who during the civil war loyally performed all the duties of neutrals to the expressed satisfaction of the Government of the United States. On the contrary while in the opinion of the Government, and the entire people of Canada, the Government of the United States neglected, until much too late, to take the necessary measures to prevent the Fenian invasion of 1870. Her Majesty's Government hastened to acknowledge by cable telegram, the prompt action of the President, and to thank him for it. The Committee of the Privy Council will only add on this painful subject that it is one on which the greatest unanimity exists among all classes of the people throughout the Dominion, and the failure of the High Commissioners to deal with it has been one cause of the prevailing dissatisfaction with the Treaty of Washington. The Committee of the Privy Council will proceed to the consideration of the other subject of dissatisfaction in Canada, viz., the cession to the citizens of the United States of the right to the use of the inshore fisheries, in common with the people of Canada. The Earl of Kimberley after observing that the Canadian Government took the initiative in suggesting that a joint British and American Commission should be appointed with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818, proceeds to state that "the causes of the difficulty lay deeper than any question of interpretation, that the discussion of such points as the correct definition of bays could not "lead to a friendly agreement with the United States," and that it was necessary therefore to endeavour to find an equivalent which the United States might be willing to "give in return for the fishery privileges." In the foregoing opinion of the Earl of Kimberley, the Committee of the Privy Council are unable to concur, and they cannot but regret that no opportunity was afforded them of communicating to Her Majesty's Government their views on a subject of so much importance to Canada prior to the meeting of the Joint High Commission.

When the Canadian Government took the initiative of suggesting the appointment of a Joint British and American Commission they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberly in his recent despatch. Had such sentiments been expressed to the delegate appointed by the Canadian Government to confer with His Lordship a few months before the appointment of the Commission it would at least have been in their power to have remonstrated against the cession of the inshore fisheries, and it would moreover have prevented any member of the Canadian Government, from acting as a member of the Joint High Commission unless on the clear understanding that no such cession should be embodied in the treaty without their consent. The expediency of the cession of a common right to the inshore fisheries has been defended on the ground that such a sacrifice on the part of Canada should be made in the interests of peace.

The Committee of the Privy Council, as they have already observed, would have been prepared to recommend any necessary concession for so desirable an object, but they must remind the Earl of Kimberley that the original proposition of Sir Edward Thornton, as appears by his letter of 26th January was that "a friendly and complete understanding

should be come to between the two Governments, as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively with reference to the fisheries on the coasts of Her Majesty's Possessons in North America." In his reply dated 30th January last Mr. Secretary Fish informs Sir Edward Thornton that the President instructs him to say that "he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission." In accordance with the explicit understanding, thus arrived at between the two Government, Earl Granville issued instructions to Her Majesty's High Commission, which, in the opinion of the Committe of the Privy Council, covered the whole ground of controversy. The United States had never pretended to claim a right on the part of their citizens to fish within three marine miles of the coasts and bays, according to their limited definition of the latter term, and although the right to enjoy the use of the inshore Fisheries might fairly have been made the subject of negotiation, with the view of ascertaining whether any proper equivalents could be found for such a concession, the United States was precluded by the original correspondence from insisting on it as a condition of the Treaty. The abandonment of the exclusive right to the inshore Fisheries without adequate compensation was not therefore necessary in order to come to a satisfactory understanding on the points really at issue. The Committee of the Privy Council forbear from entering into a controversial discussion as to the expediency of trying to influence the United States to adopt a more liberal commercial policy. They must, however, disclaim most emphatically the imputation of desiring to imperil the peace of the whole empire in order to force the American Government to change its commerical policy. They have for a considerable time back ceased to urge the United States to alter their commercial policy; but they are of opinion that when Canada is asked to surrender her inshore Fisheries to foreigners, she is fairly entitled to name the proper equivalent. The Committee of the Privy Council may observe that the opposition of the Government of the United States to reciprocal free trade in the products of the two countries, was just as strong for some years prior to 1854, as it has been since the termination of the Reciprocity Treaty, and that the Treaty of 1854 was obtained chiefly by the vigorous protection of the Fisheries which preceded it, and that but for the conciliatory policy on the subject of the Fisheries, which Her Majesty's Government induced Canada to adopt afer the abrogation of the Treaty of 1854, by the United States, it is not improbable that there would have been no difficulty in obtaining its renewal. The Committee of the Privy Council have adverted to the policy of Her Majesty's Government because the Earl of Kimberley has stated that there is no difference in principle between a money payment and "the system of licenses calculated at so many dollars a ton which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty." Reference to the correspondence will prove that the license system was reluctlantly adopted by the Canadian Government, as a substitute for the still more objectionable policy pressed upon it by Her Majesty's Government, it having been clearly understood that the arrangement was of a temporary character. In his despatch of the 3rd March, 1866, Mr. Secretary Cardwell observed:—"Her Majesty's Government do not feel disinclined to allow the United States for the season of 1866, the freedom of fishing granted to them in 1854, on the distinct understanding that unless some satisfactory arrangement between the two countries be made during the course of the year this privilege will cease, and all concessions made in the Treaty of 1854, will be liable to be withdrawn." The principle of a money payment for the concession of territorial rights has ever been most repugnant to the feelings of the Canadian people and has only been entertained in deference to the wishes of the Imperial Government. What the Canadians were willing under the circumstances to accept as an equivalent, was the concession of certain commercial advantages, and it has therefore been most unsatisfactory to them that Her Majesty's Government should have consented to cede the use of the inshore Fisheries for considerations which are deemed wholly inadequate.

The Committee of the Privy Council need not enlarge further on the objectionable

features of the treaty, as it bears on Canadian interests. These are admitted by many, who think that Canada should make sacrifices for the general interests of the Empire. The people of Canada, on the other hand, seem unable to comprehend that there is any existing necessity for the cession of the right to use their inshore fisheries without adequate compensation. They have failed to discover that in the settlement of the so called Alabama Claims, which was the most important question in dispute between the two nations, England gained such advantages, as to be required to make further concessions at the expense of Canada, nor is there anything in the Earl of Kimberley's despatch to support such a view of the question. The other parts of the treaty are equally, if not more advantageous to the United States than to Canada, and the fishery question must consequently be considered on its own merits; and if so considered no reason has yet been advanced to induce Canada to cede her inshore fisheries for what Her Majesty's Government have admitted to be an inadequate consideration. Having thus stated their views on the two chief objections to the late Treaty of Washington, the Committee of the Privy Council will proceed to the consideration of the correspondence between Sir Edward Thornton, and Mr. Fish, transmitted in the Earl of Kimberley's despatch of the 17th June, and of His Lordship's remarks thereon. This subject has already been under the consideration of the Committee of the Privy Council, and a report dated the 7th June, embodying their views on the subject was transmitted to the Earl of Kimberley by your Excellency. In his despatch of the 26th June, acknowledging the receipt of that report, the Earl of Kimberley refers to his despatch of the 17th of that month and "trusts that the Canadian Government will on mature consideration "accede to the proposal of the United States Government, on this subject." The committee of the Privy Council in expressing their adherence to their report of the 7th June, must add that inapplicability of the precedent of 1854, under which the action of the Canadian Parliament was anticipated by the Government, to the circumstances now existing appears to them manifest. The treaty of 1854 was negotiated with the concurrence of the Provincial Governments represented at Washington, and met with the general approbation of the people, whereas the fishery clauses of the late treaty were adopted against the advice of the Canadian Government and have been generally disapproved of in all parts of the Dominion. There can hardly be a doubt that any action on the part of the Canadian Government in anticipation of the decision of Parliament would increase the discontent which now exists. The Committee of the Privy Council request that Your Excellency will communicate to the Earl of Kimberley the views which they entertain on the subject of the Treaty of Washington in so far as it affects the interests of the Dominion.

(Certified) Wm. H. Lee,
Clerk Privy Council.

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(Copy.—Canada—No. 561.)

*The Secretary of State for the Colonies to the Governor General.*

Downing Street, 23rd November, 1871.

My Lord,—Her Majesty's Government have not failed to consider with attention the Report of the Committee of the Privy Council of the Dominion on the Treaty of Washington, which was enclosed in Your Lordship's despatch, No. 143, of August 15th. I need scarcely say that Her Majesty's Government regret that your Ministers should have found so much to object to in the provisions of the Treaty, but they remain themselves of opinion, for the reasons which were fully stated in my despatch of June 17 last, that, looked at as a whole, the Treaty is beneficial to the interests of the Dominion.

I shall endeavor, as far as possible, to avoid entering into further discussion of the clauses of the Treaty which apply especially to Canada, as I cannot think that any

advantage would result from a prolonged controversy between the two Governments as to the details of the Treaty, and the manner in which the negotiation was conducted. There are, however, two or three statements in the Report which it is necessary that I should not leave unnoticed.

The Committee seem to be under the impression that the right to participate in the Colonial Inshore Fisheries has been conceded to the United States without the previous consent of Canada. On this I have to observe that provision has been made for obtaining the assent of Canada in the manner which is strictly in accordance with constitutional usage, namely by stipulating that the fishery articles shall not come into force without the previous assent of the Dominion Parliament. If the Crown were to conclude a similar Treaty as regards the Fisheries of the United Kingdom, the assent of the Imperial Parliament would be reserved in no other manner.

I must also point out that the Committee are under an entire misapprehension in supposing that the cession of the Fishery rights is to be made for "what Her Majesty's "Government have admitted to be an inadequate consideration." If you will refer to my Despatch of June 17th, you will find that it was there stated that "the reciprocal concession of free fishing with free impost of fish and fish oil together with the payment of such a sum of money as may fairly represent the excess of value of the Colonial over the American concession seems to Her Majesty's Government to be an equitable solution of the difficulty."

Lastly, I must advert to the statement that "when the Canadian Government took the initiative in suggesting the appointment of a Joint British and American Commission, they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberley in his recent despatch. Had such sentiments been expressed to the delegate, appointed by the Canadian Government to confer with His Lordship a few months before the appointment of the Commission, it would at least have been in their power to have remonstrated against the cession of the inshore fisheries, and it would moreover have prevented any member of the Canadian Government from acting as a member of the Joint High Commission, unless on the clear understanding that no such cession should be embodied in the Treaty without their consent."

It is true, no doubt, that in the conversation which I had with Mr. Campbell on the subject of the appointment of a joint British and American Commission, I did not allude to the possibility of such a Commission leading to an arrangement by which United States' fishermen should be admitted to participation in the Colonial inshore fisheries; but I could not then anticipate that an extended negotiation embracing all the questions at issue between Great Britain and the United States would arise out of the proposal to appoint a Commission upon the Fisheries; and when the Joint High Commission was appointed, it was distinctly intimated through Your Lordship to Sir John Macdonald, with reference to the Fisheries, before he accepted the office of Commissioner, that it was impossible for Her Majesty's Government to pledge themselves to a foregone conclusion on any particular point before entering into the negotiation.

I have, &c.,

(Signed,) KIMBERLEY.

Governor General
The Right Hon.
Lord Lisgar, G.C.B., &c., &c.

(Copy—No. 13.)

*The Governor General to the Secretary of State for the Colonies.*

My Lord,—I have the honor to enclose for Your Lordship's consideration a Minute of the Privy Council of the Dominion, which conveys the reply of that body to Your Lordship's Despatch No. 561, of the 23rd of November last, and urges the request for an Imperial guarantee to a Canadian loan, not to exceed four millions, *i.e.*, half the amount to be expended on the railway to the Pacific, and the enlargement of the St. Lawrence Canals.

20th January, 1872.

2. This proposal the Council recommend, as in their opinion, the best mode of adjusting all demands on the score of the Fenian claims, and of surmounting the difficulties in the way of obtaining the consent of the Canadian Parliament to the measures necessary to give effect to the Treaty of Washington.

I have, &c.,
(Signed) Lisgar.

The Right Honorable
The Earl of Kimberley.

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Copy *of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 20th January, 1872.*

The Committee of the Privy Council have had under their consideration the Earl of Kimberley's Despatch to Your Excellency, dated the 23rd of November, 1871, on the subject of the Report of the Privy Council dated the 28th of July, and transmitted in Your Excellency's Despatch of the 15th of August. The object of that Report was to explain to Her Majesty's Government that much dissatisfaction prevailed in Canada owing to the absence of all provision in the Treaty of Washington for the settlement of the losses incurred by Canada, in consequence of the raids of citizens of the United States on British Territory, and also owing to the cession of the Canadian fisheries for an inadequate consideration. The Committee of Council were aware, from the Earl of Kimberley's Despatch of the 17th of June, 1871, that Her Majesty's Government were very desirous that the Acts necessary to give effect to the fishing clauses of the Treaty of Washington should be passed by the Canadian Parliament, and they hoped that some proposition might be made by Her Maiesty's Government, in reply to their Report, that would enable them to propose such measures with a fair prospect of success.

In the Earl of Kimberley's Despatch to Your Excellency, dated 23rd of November, no reference whatever is made to the subject of the Fenian Raids, and with regard to the fishery clauses of the Treaty the only inference to be drawn from the despatch is that the objections raised by the Committee of Council are of very little weight.

The Committee of Council readily admit that further controversial discussion on the points on which differences of opinion unfortunately exist between the two Governments would be unprofitable. It is, however, due both to Her Majesty's Government and to themselves that they should frankly explain to the former the conclusion at which they have arrived on the two questions discussed in their Report of 28th of July last.

They maintain that Canada has a just claim to compensation for the expenses incurred in consequence of the Fenian Raids. It seems unnecesssary to support this opinion by further argument.

Although the Committee of Council deem it unnecessary to dwell on the objections which they entertain to the Fishery clauses in the Treaty, they desire to offer an explanation with reference to the Statement in their former Report, to which the Earl of Kimberley has taken exception, and which was to the effect that Her Majesty's Government had ceded the rights of Fishery, for what they admitted to be an inadequate consideration.

In the course of the negotiations, the United States Commissioners had offered as an equivalent for the rights of Fishery, to admit Canadian Coal and Salt, free of duty and Lumber, after the 1st of July, 1874. This was deemed both by the Imperial and Canadian Governments an inadequate offer, and a counter proposition was made by the British Commissioners, that lumber should be admitted free immediately, and that in consideration of the continued exclusion of cereals, live stock and other articles, admitted under the Treaty of 1854, a sum of money should be paid to Canada. The United States Commissioners, not only refused the counter proposition, but withdrew their former offer subtituting one which the Committee of Council infer from the Earl of Kimberley's Despatch was in the opinion of Her Majesty's Government, more favorable to Canada, that that which had been rejected as inadequate. Wide, however, as are the differences of opinion on this Continent regarding the Treaty, there is but one opinion on the point under consideration. It is clear that the United States preferred paying a sum of money to the concession of commercial advantages to Canada, and the Committee of Council feel assured that there is not a single member of the Canadian Parliament, who would not have much preferred the rejected proposition to that which was finally adopted.

The Committee of Council cannot, with the Earl of Kimberley's Despatch before them, continue to affirm that Her Majesty's Government are of opinion that the cession of the Fishery rights was made for an inadequate consideration, but they regret that they are themselves of a different opinion.

While still adhering to their expressed opinions as to the Fishery Articles of the Treaty of Washington, they are yet most anxious to meet the views of Her Majesty's Government and to be placed in a position to propose the necessary legislative measures, and they will therefore proceed to make a suggestion which they earnestly hope may receive a favourable response.

The adoption of the principle of a money payment in satisfaction of the expenses incurred by the Fenian raids, would not only be of no assistance with reference to the Treaty, but might lead to some complications. It is not improbable that differences of opinion would arise in the discussion of the details of those claims between the two Governments, which might lead to mutual dissatisfaction. Again such a solution of the question, would necessitate a discussion in the Imperial Parliament, in the course of which opinions might be expressed by members, which might irritate the people of Canada and might moreover encourage the Fenian leaders in the United States, who have not ceased their agitation.

There is in the opinion of the Committee of Council a mode by which their hands might be so materially strengthened that they would be enabled not only to abandon all claims on account of the Fenian raids, but likewise to propose with a fair prospect of success, the measures necessary to give effect to those clauses in the Treaty of Washington, which require the concurrence of the Dominion Parliament. That mode is by an Imperial Guarantee to a portion of the loan which it will be necessary for Canada to raise in order to procure the construction of certain important public works, which will be highly beneficial to the United Kingdom as well as to Canada. It is not pretended that the construction of these works is contingent on an Imperial guarantee. The credit of Canada has never stood so high in the money market as at the present time, its 5 per cent. securities being at a premium. But there is no doubt that with the Imperial Guarantee, a considerable saving of interest could be effected.

The Committee of Council feel assured that Her Majesty's Government will recognize the scrupulous good faith which has invariably been observed by Canada under Governments of various shades of politics. Her Majesty's Government are aware that one of the conditions on which British Columbia joined the Confederation, was that Canada, should procure the construction of an Interoceanic Railroad. In order to procure the construction of this gigantic work, a cash subsidy will have to be granted to the Company undertaking it, to the extent in all probability of five millions sterling. This Railroad will open up for settlement the vast prairies of the North-West, which will sustain an enormous population. According to the most reliable statistics, the immigration from

the United Kingdom to Canada, is in about the proportion of one to six to that from the United Kindom to the United States, the population the United States being more than ten times against that of Canada. On the other hand, the imports into Canada of staple articles of British manufacture, such as cottons, woollens, and iron and hardware, are about three times as large in proportion to population as those into the United States. It is therefore clearly the interest of the United Kindom that the British North West Territories should be opened for settlement as speedily as possible, and to effect this object, the Canadian Pacific Railroad is indispensably necessary. That Railroad, it may be added, would in all probability be found the most eligible mode of conveying a portion of Her Majesty's mails to the East.

The time has arrived when the enlargement and extension of the Canadian Canals, so earnestly desired by the United States, as appears by the protocols attached to the Treaty of Washington, can no longer be postponed.

The required works must be constructed by the Government, and will cost about three millions sterling, the aggregate for the Railroad and Canals being eight millions. The revenues of Canada are in a most satisfactory condition, and fully able to bear the increased charge which will be gradually thrown upon them. The taxes are much less than in the adjoining republic, and are cheerfully borne by the people.

The Committee of Council are of opinion that Her Majesty's Government might fairly be urged to propose to Parliament a guarantee for a Canadian loan, not to exceed four millions sterling, on the condition that such guaranteed loan should be raised at the same time, and in equal proportion with a Canadian unguaranteed loan for the same objects. The Committee of Council do not believe that any better mode can be suggested by which they would be enabled to surmount the difficulties in the way of their obtaining the consent of the Canadian Parliament to the measures necessary to give effect to the Treaty of Washington, than that which they have felt it their duty to recommend. The Committee of Council trust, that should other difficulties be removed, Her Majesty's Government will enable them to assure the Canadian Parliament, that any recommendation made to Canada to terminate the articles of the Treaty of Washington, numbered 18 to 25 inclusive, and likewise Article 30, in conformity with Article 33, would be acted on.

Certified,

Wm. H. Lee,
Clerk Privy Council,
Canada.

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*The Secretary of State for the Colonies to the Governor-General.*

(Copy—Canada—No. 58.)

Downing Street, 18th March, 1872.

My Lord,—Her Majesty's Government have given their most careful attention to the report of the Committee of the Canadian Privy Council enclosed in your Lordship's despatch No. 13, of January 22.

The Committee state that, while adhering to their opinion as to the Fishery Articles of the Treaty of Washington, they are yet most anxious to meet the views of Her Majesty's Government, and to be placed in a position to propose the necessary legislative measures. They maintain that Canada has a just claim for compensation for expenses incurred in consequence of the Fenian raids, but they are of opinion that the adoption of the principle of a money payment in satisfaction of those expenses would be of no assistance with reference to the Treaty, and would be open to objection on other grounds. They therefore suggest another mode of settlement by which in their opinion their lands might be so materially strengthened that they would be enabled, not only to abandon all claims on account of Fenian raids, but likewise to propose to the Dominion Parliament with a fair prospect of success the measures necessary to give effect to the Treaty.

Their suggestion is, that Her Majesty's Government should propose to Parliament a guarantee for a Canadian Loan, not exceeding four millions sterling, being half the amount (£8,000,000) which it is intended to raise for the purpose of constructing the railroad through British territory to the Pacific, and of enlarging and extending the Canadian Canals.

Her Majesty's Government have considered this suggestion with an earnest desire to remove the difficulties which are felt by the Canadian Government, and I have now to convey to you the conclusions at which they have arrived.

They are of opinion that the most convenient course will be that it should be provided in the Acts to be passed by the Dominion Parliament to give effect to the Treaty that such acts should only come into force upon the issue of a Proclamation by the Governor General in Council bringing them into operation. On their part Her Majesty's Government will engage that when the Treaty shall have taken effect by the issue of such proclamation they will propose to Parliament to guarantee a Canadian Loan of £2,500,000, such loan to be applied to the purposes indicated by the Council, namely, the construction of the railroad through British Territory from Canada to the Pacific, and the improvement and enlargement of the Canadian lands, and to be raised at the same time and in equal proportion with the Canadian unguaranteed loan for the same objects, on the understanding that Canada abandon all claims on this country on account of the Fenian raids.

As regards the request of the Privy Council that Her Majesty's Government will enable them to assure the Dominion Parliament that any recommendation made by Canada to terminate the articles of the Treaty numbered 18 to 25 inclusive, and likewise article 30 in conformity with article 33 would be acted on, I may observe that no such assurance was asked or given in the case of the Reciprocity Treaty, but Her Majesty's Government recognize that it is not unreasonable that Canada should desire some assurance on this point, and they have therefore no hesitation in declaring that the greatest deference would be paid to the expression of the wishes of the Dominion signified by Addresses from both Houses of the Dominion Parliament, and that those wishes would certainly be attended to; subject of course to the necessary reservation of Her Majesty's discretion to take into consideration in the interest of the whole empire the state of her relations with foreign powers at the particular juncture.

I have already conveyed to your Lordship by telegraph the substance of this despatch.

I have, &c.,

Signed, KIMBERLEY.

Governor General,
The Rt.-Honble. Lord Lisgar,
G. C. B., G. C. M. G., &c., &c., &c.

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(Copy—No. 95.)

CANADA.

Government House,

Ottawa, April 15, 1872.

My Lord,—With reference to Your Lordship's despatch, No. 58, of March 18th, 1872, I have now the honor to forward herewith a copy of a Minute of the Privy Council of the Dominion from which Your Lordship will perceive that the Ministers announce their intention of proposing to the Canadian Parliament the measures necessary to give effect to those clauses of the Treaty of Washington which relate to Canada.

15th April, 1872.

I have, &c.,

(Signed,) Lisgar.

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*Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General on the 15th day of April, 1872.*

The Committee of the Privy Council have had under their consideration the Earl of Kimberley's despatch to Your Excellency, dated the 18th ult., communicating the views of Her Majesty's Imperial Government on the proposition submitted in the report of the Privy Council transmitted in Your Excellency's despatch of 22nd January last.

From the despatch it appears that Her Majesty's Government are of opinion that the most convenient course will be that it should be provided in the Acts to be passed by the Dominion Parliament to give effect to the Treaty that such Acts should only come into force upon the issue of a Proclamation by the Governor General in Council bringing them into operation; that on their part Her Majesty's Government will engage that when the Treaty shall have taken effect by the issue of such Proclamation, they will propose to Parliament to guarantee a Canadian loan of £2,500,000, such loan to be applied to the purposes indicated by the Council, namely, the construction of the railroad through British Territory from Canada to the Pacific, and the improvement and enlargement of the Canadian Canals, and to be raised at the same time and in equal proportions with the Canadian unguaranteed Loan for the same objects, on the understanding that Canada abandon all claims on England on account of the Fenian Raids.

The Earl of Kimberley further observes that Her Majesty's Government will enable the Canadian Government to assure the Dominion Parliament that any recommendation made by Canada to terminate the Articles of the Treaty numbered XVIII to XXV inclusive, and likewise Article XXX in conformity with Article XXXIII, will be acted on, that they have no hesitation in declaring that the greatest deference would be paid to the expression of the wishes of the Dominion signified by Addresses from both Houses of the Dominion Parliament. and that those wishes would certainly be attended to, subject of course to the necessary reservation of Her Majesty's discretion to take into consideration in the interests of the whole Empire the state of her relations with foreign powers at the particular juncture.

The Committee of the Privy Council feel that although Her Majesty's Government have been unable to accede to their proposition in full, it is nevertheless their duty, in the interests both of Canada and the Empire at large, to accept the modified proposition of the Earl of Kimberley, and they will accordingly be prepared to propose to the Canadian Parliament, the measures necessary to give effect to those clauses of the Treaty relative to Canada.

Certified, WM. H. LEE.
Clerk Privy Council, Canada.

# REVIEW

OF

# PRESIDENT GRANT'S RECENT MESSAGE

TO THE

# UNITED STATES CONGRESS,

RELATIVE TO THE

# CANADIAN FISHERIES AND THE NAVIGATION OF THE ST. LAWRENCE RIVER.

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That portion of the last Message of the President of the United States, to the Senate and House of Representatives, which animadverts on the conduct of the Canadian Government, with regard to the protection of the British Fisheries and the navigation of River St. Lawrence, has been severely criticised by all the leading organs of public opinion in Canada. That fact alone ought to convince the citizens of the United States that the action of Canada cannot have been so indefensible as the President has represented it to be. While perfect unanimity prevails in Canada regarding the question in controversy with the United States it is gratifying to find that many influential American journals are indisposed to concur either in the policy of non-intercourse which has been threatened by the President, or admit the existence of the wrong to which he refers.

It may be hoped that a dispassionate review of the points in dispute between Great Britain and the United States, with regard to the interpretation of the Treaty of 1818, will strengthen the hands of those who desire their amicable solution, and the continuance and extension of these friendly relations which have hitherto existed between the people of the United States and Canada.

It is not to be supposed that any considerable number of people in the United States would demand the abrogation of a solemn Treaty which was the result of protracted negotiations, during which both nations conceded extreme pretensions for the sake of peace; much less can we believe that Treaty rights would be disregarded, such as would clearly be the case if the measures of non-intercourse, indicated in the Message, were carried out.

If the measures, to which we have referred, are aimed at as a means of retaliation upon Canadians for either real or fanciful wrongs, it becomes doubly the duty of all dispassionate and right-thinking men, of all real lovers of their country, whether on this side of the border or the other, to examine the grounds upon which such grievances are supposed to exist; and if such do exist, then to adopt such peaceful means as will secure their removal. It may be safely affirmed that neither the Imperial nor the Dominion Government desire to strain the Treaty beyond the plain and obvious meaning of its text. If its language should be deemed ambiguous, or susceptible of more than one interpretation, then the obvious mode of solving the difficulty is by arbitration, and not by hostile threats or retaliatory legislation, which, if realized, cannot be otherwise than injurious to both peoples.

There are, unfortunately, individuals in the United States who do not hesitate to recommend the adoption of a menacing attitude towards Great Britain. We have no apprehension that their counsels will prevail, but it is quite probable, that acting on imaginary grievances—on premises which have no foundation in fact—or referring to imaginary wrongs on the part of Canadians towards their fishermen by the raising of an anti-British cry, that the people of the United States may endeavour to bring pressure to bear on Canada by a so-called retaliatory policy, which, most assuredly, will injure its own citizens even more than the Canadians.

In the message referred to there are many subjects dealt with which possess but little interest for our people. It need concern us but little as to what may be the opinions of President Grant about the Franco-Prussian war—the recognition of the French Republic—the negotiations with Spain, or the action of the Cuban insurgents,—but, while referring to these and other subjects of general importance, he reiterates the celebrated "Munro doctrine," with which former Presidential messages and the sentiments of many American statesmen have made us familiar, and states that, "The time is most probably not far distant "when, in the natural course of events, the European political connection with "this continent will cease," and advises that the policy of the United States should be shaped so as to accord with that coveted event. Such a contingency,

doubtless, has inspired the policy of the United States in their treatment of the Alabama claims, and we cannot find in the President's statements any evidence of "sincerity" when he expresses his desire for a settlement of that question "consistent with the honor and dignity of both nations." We would, however, refer to that portion of this extraordinary document which still more immediately affects ourselves.

The President states, "That the course pursued by the Canadian authorities "towards the fishermen of the United States, during the past season, has not "been marked by a friendly feeling." He refers to the rights that United States citizens have in common with British subjects under the Treaty of 1818,—and also to those in the waters not included in the limits named in the Convention within three miles of the coast.

He also states, "That it has been the custom for many years, to give "intending fishermen of the United States a reasonable warning of their "violation of the technical rights of Great Britain." He further adds, "That "the Imperial Government is understood to have delegated the whole, or a share "of its jurisdiction or control of its inshore fisheries to the Colonial authority "known as the Dominion of Canada, and that this *semi-independent, but "irresponsible agent* has exercised its delegated powers in an unfriendly way; "vessels have been seized without notice or warning, in violation of the custom "previously prevailing, and have been taken into the Colonial Ports, their "voyages broken up, and the vessels condemned." He further states, "That "there is reason to believe, that this unfriendly and vexatious treatment was "designed to bear harshly upon the hardy fishermen of the United States, with "a view to political effect upon this Government." "That the Statutes of the "Dominion of Canada, assume a still broader and more untenable jurisdiction "over the vessels of the United States," by preventing them from "hovering "within three marine miles of the coasts, bays, creeks, or harbours of Canada," and by inflicting a penalty, if, on examination of masters, true answers are not given, or if such vessel "is found preparing to fish within three marine miles of "any of the coasts, bays, creeks, or harbours, without a licence, or after the "expiration of the period named in the last license granted to it," and that they provide forfeiture of the vessel. The President intimates, that should the authorities of Canada attempt to enforce this Act, it will become his duty to take such steps as may be necessary to protect the rights of the citizens of the United States.

He further alleges that:—"It has been claimed by Her Majesty's Officers "that the fishing vessels of the United States have no right to enter the open

"ports of the British Possessions in North America, except for the purposes "of shelter and repairing damages, of purchasing wood, and obtaining water; "that they have no right to enter at the British Custom Houses, or to trade, "except for the purchase of wood and water, and that they must depart after "twenty-four hours' notice to leave."

He further states that:—"So far as the claim is founded on alleged "construction of the Convention of 1818, it cannot be acquiesced in by the "United States;" and that "It is hoped that it will not be insisted upon by "Her Majesty's Government." He maintains that that principle was contended for at the conferences preceding the Convention of 1818, by the British Commissioners, and, on its rejection by the American Commissioners, was abandoned by the British; and that Article I., as it stands in the Convention, was substituted.

He further observes that, "If this claim is founded on Provincial or Colonial "Statutes, and not upon the Convention, this Government cannot but regard "them as unfriendly, and in contravention of the spirit if not the letter of the "Treaty, for the faithful execution of which the Imperial Government is alone "responsible."

Such are the statements of President Grant; and if he believes that he has truly stated the case, in relation to the fisheries, then he is much mistaken Now what are the facts? To ascertain them, we must go back to a period anterior to the Treaty of 1783, when as British subjects, the inhabitants of the old American Colonies, after Canada and Nova Scotia were wrested from the Kingdom of France, enjoyed, with the inhabitants of the other British Colonies, a common use of the fisheries along the whole North American Atlantic. Coast, with certain exceptions on the coast of Labrador and a portion of the Gulf of St. Lawrence, and the coast of what is now known as New Brunswick.

In the discussions and negociations which preceded the peace of 1783, an effort was made by the American Commissioners to claim a right to the fisheries on the coasts on which they had prosecuted them while still British subjects. They claimed that, at the time they were British subjects, they had assisted to wrest Nova Scotia and Cape Breton from France, and that, by right of conquest, they should participate and enjoy, in common with British subjects, the privileges of these fisheries. The British Commissioners, on the other hand, contended that the conquest was achieved by Great Britain, and that though the subjects of Her Majesty in the old Colonies had aided as they were bound, as part of the Empire, to do, in securing victory to the British arms, that the acquisition of Nova Scotia and the other Territories wrested from France, with

all their privileges and the fisheries in the vicinity of their coasts, inured to the benefit of the Empire, and that the old Colonies in seceding (though entitled to the fisheries off their own coasts, as a territorial incident of their country), ceased to have a right in fisheries off the coasts of Provinces which remained loyal to the Empire, and which incident inured to the benefit of British subjects alone. The American commissioners felt it to be of vital interest to their young nation to obtain some recognized status on these fishing grounds, and, by perseverence and persistence, succeeded, through the tendency of British Statesmen to give way for peace sake, in securing the third Article in the Treaty of 1783, which is as follows:—

"ART. III.—It is agreed, that the people of the United States shall continue to "enjoy unmolested the right to take fish of every kind on the Grand Bank and on all "the other banks of Newfoundland: also in the Gulf of St. Lawrence, and at all other "places in the sea, where the inhabitants of both countries used at any time heretofore to "fish. And also that the inhabitants of the United States shall have liberty to take fish "of every kind on such part of the coast of Newfoundland, as British fishermen shall use "(but not to dry or cure the same on that Island) and also on the coasts, bays, and creeks "of all other of His Britannic Majesty's dominions in America; and that the American "fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, "and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall "remain unsettled; but so soon as the same, or either of them, shall be settled, it shall "not be lawful for the said fishermen to dry or cure fish at such settlement, without a "previous agreement for that purpose with the inhabitants, proprietors, or possessors of "the ground."

In the text of this article we have two principles clearly laid down—the continuing and concurrent right, by which it was agreed that the people of the United States should continue to enjoy certain fisheries, and also, the liberty of a transitory character, which, under certain circumstances, was conceded to them; in the one case their continuing right was admitted to take fish at "sea," while in the other, a liberty of a limited character was given in certain territorial possessions of His Britannic Majesty in America.

Each party, by the Treaty of 1783, had certain clear and distinct rights of fishing at sea, and which were recognized and admitted by the other as founded upon the law of nations, while in and around the coasts of each nation, with certain exceptions named in the Treaty, the exclusive right and jurisdiction over three miles from the coast was conceded, as a right existing by the law of nations, and attaching territorially to each country.

The war of 1812 suspended and abrogated the Treaty of 1783. It became inconsistent with the existence of hostilities that concurrent privileges should be exercised in relation to the fisheries, and the Americans practically relinquished a liberty which a state of war prevented them from enjoying. Thus matters

continued until peace was proclaimed, and efforts were made at the making of the Treaty of Ghent to establish what were henceforth to be the rights which each nation was entitled to enjoy.

During the negociations preceding that Treaty many difficulties arose,—the American Plenipotentiaries claimed all the rights which they enjoyed previous to the declaration of Independence. While the British Ministers asserted that as the extensive rights claimed by the Americans depended solely on the Treaty of 1783, and that the war of 1812 had put an end to that Treaty, just as the right of British subjects to navigate the Mississippi from its mouth to its source was by that Treaty granted to British subjects, and was terminated by the war, so also with the fisheries clause, and that both subjects were open to be considered and dealt with—the British, while conceding the *right* of fishing, to which they considered Americans entitled, refused to renew the *liberties* which they conceded to them in the Treaty of 1783. They were willing to accept, as a partial equivalent for certain fishing privileges, the free navigation of the Mississippi, but this offer was declined by the Americans, and the latter refused to renew the Mississippi clause, except upon concessions of fishery privileges as an equivalent, which the British Commissioners would not consent to. The American Commissioners subsequently declined to renew the clause of the Treaty of 1783, which would have given the free navigation of the Mississippi to British subjects, and the result was that the fisheries were omitted from the Treaty, as they were also from an arrangement of trade and commerce subsequently made between Commissioners of the two nations, signed at London in 1815.

It may be here stated, that Mr. Russell, one of the American Commissioners, differed with his colleagues in reference to the fisheries, and practically, upon that important point, sustained the view taken by the British Commissioners. See Senate State Papers.

The Treaty of Peace having been thus settled, without the Commissioners of the two countries having been able to arrange conditions in relation to the *fisheries*, and as the war abrogated the Treaty of 1783, which gave certain privileges to Americans, the rights of the two countries in relation to these fisheries, as laid down in the law of nations, hereafter quoted, may be briefly stated thus—that each nation possessed those rights which, from their geographical position, the law of nations accorded under such circumstances. Thus, it may be stated, that each nation possessed a common right of fishing at sea; next, that, as attaching territorially to them the Americans possessed or were entitled to claim all the fisheries within three miles of their *coasts, bays, and creeks,* from the eastern boundary of what is now the State of Maine to the southern boundary

of their States; and they would have resisted any claim which Great Britain might have put forward to participation therein; but the British were equally entitled to claim the same exclusive right to the fisheries within three miles of the coasts, bays, and creeks of her remaining possessions, from the eastern boundary of Maine, along the shore of her territory, and the islands adjacent thereto, and extending northerly to Labrador, and to the most northerly extent of her possessions. Such, under ordinary interpretation, would be the rights of each. The American Commissioners professed to claim that the Treaty of 1783 was not to be governed by *the ordinary law of nations*, and that a state of war did not abrogate its provisions, but, as this claim could not be supported by authority or precedent, and was diametrically opposed to the law and customs which governed civilized nations, as well as reason, practice, and common sense, the British Commissioners refused to recognize any such assumption. Thus the matter stood at the commencement of the fishery season of 1815.

The Americans hoped that by a bold assertion of right, and acting up to it in practice, and counting upon the forbearance of British statesmen, and their reluctance to resort to extreme measures, that their fishermen would be permitted to continue to enjoy the same privileges as before the war. This the British Government were firm in resisting. See the Earl of Bathurst's despatch, under date 17th June, 1815, marked A in the appendix annexed. This forced the consideration of the subject upon the United States, and the Honorable John Quincy Adams, American Minister at the Court of St. James, addressed an able letter on the 15th October, 1815, to Her Majesty's Government, which was the foundation of new negotiations, which, after three years, resulted in the Treaty of 1818. In this letter, Mr. Adams very ably stated the case of the United States—he contended for the original right of his countrymen, to both the *rights* as well as the "*liberties*" that were conceded by the Treaty of 1783—he held that their claim rested on the original discovery, as well as from participation in the conquest from the French—he further held that the war of 1812 did not abrogate the Treaty of 1783; but, while claiming these fisheries as a matter of right, he appealed also to the "*benevolence*" and "*humanity*" of the British nation to allow the recognition of those "*liberties*" which were contained in the previous Treaty, and concluded his very able paper, by saying: "In repeating " with earnestness all these suggestions, it is with the hope that from *some* or *all* " of them His Majesty's Government will conclude the justice and expediency " of leaving the North American Fisheries in the state in which they have here- " tofore constantly existed, and the fishermen of the United States unmolested " in their '*liberties.*'"

To this Earl Bathurst replied, on the 30th of the same month, on behalf of His Majesty's Government, and he informed Mr. Adams, in speaking of the claims which he had set up, "That a pretension of the kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported."

He further informs Mr. Adams, that—

"His Majesty's Government have not failed to give to the arguments a candid and deliberate consideration, and although they are compelled to resist the claim of the United States when thus brought forward as a question of '*right*,' they feel every disposition to afford to the citizens of those States all the liberties and privileges connected with the fisheries which can consist with *the just rights and interests of Great Britain*, and secure His Majesty's subjects from those undue molestations in their fishery which they formerly experienced from the citizens of the United States." He further observed, "The Minister of the United States appears to be well aware that Great Britain has always considered the liberty formerly enjoyed by the United States of fishing within British limits, and using British territory, as derived from the 3rd article of the Treaty of 1783, and from that alone, and that the claim of an independent State to occupy and use at its discretion any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other than conventional stipulations."

Earl Bathurst answered the different points in Mr. Adams' despatch most ably, and at considerable length. He showed that the "*liberties*," as distinct from "*rights*," which Americans urged, were wholly derivable from the Treaty, and refuted the position assumed by Mr. Adams, that the 3rd article of the Treaty was still in force, but intimated a disposition to "*concede a modified renewal of the liberties in question*," not as a matter of right, but from a conciliatory desire on the part of His Majesty's Government to meet the wishes of the United States. We have thought it desirable to insert in the appendix marked H this very able paper, in which Earl Bathurst so fully and ably refutes the positions assumed by the United States through Mr. Adams, and so clearly maintains the absolute right as claimed by His Majesty's Government.

The British Cabinet, following up the friendly intimation which they had given Mr. Adams, proposed to Mr. Munro, the then American Secretary of State, through Mr. Bagot, the British Minister at Washington, a district of shore on the Labrador Coast, from Mount Joly to the Bay of Esquimaux, near the Straits of Belle Isle. This Mr. Munro thought insufficient for the purposes of shelter and

of drying and curing their fish. Mr. Bagot then offered a portion of the southern coast of Newfoundland, from Cape Ray eastward, to the Rameau Islands, which Mr. Munro also declined as inadequate to the wants, and he, subsequently, in December, 1816, offered the use to American fishermen, in common with the British, of both the districts previously named. This proposition the American Government neither accepted nor rejected, but proposed to postpone the decision to enable them to get further information as to its suitableness. In the month of June, 1817, twenty American vessels were seized at Ragged Island in Nova Scotia, and this again forced the immediate consideration of the subject upon the notice of the American Government, and on the 28th of July, 1818, instructions were given by Mr. Adams, the then Secretary of State of the United States, to Messrs. Rush and Gallatin, which resulted in the following October in obtaining the Treaty of 1818, the terms of which have been already stated.

Determined to maintain the rights of their Colonial subjects, the vessels so seized for trespassing upon the fishing limits of British territorial jurisdiction were prosecuted in the Admiralty Courts of Nova Scotia; and while these courts held that they were illegally in port and violating the Treaty the absence of any Imperial or Provincial statute providing the machinery for enforcing penalties or confiscation enabled them to escape. This decided action on the part of His Britannic Majesty brought matters to an issue, and taught American statesmen the folly of their untenable and exacting attitude during the discussion of the former peace negotiations, and propositions were subsequently made, as above stated, to the British Government, which resulted in the Fishery Article of the Convention of 1818:

" ART. 1.—Whereas, differences have arisen respecting the liberty claimed by the " United States, for the inhabitants thereof to take, dry, and cure fish on certain coasts, " bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed, " between the high Contracting Parties, that the inhabitants of the said United States " shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty " to take fish of every kind on that part of the southern coast of Newfoundland which " extends from Cape Ray to the Rameau Islands, on the western and northern coast of " Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the " Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, " on the southern coast of Labrador, to and through the Straits of Belleisle, and thence " northwardly indefinitely along the coast, without prejudice, however, to any of the " exclusive rights of the Hudson's Bay Company: and that the American fishermen shall " also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors and " creeks of the southern part of the coast of Newfoundland hereabove described, and of " the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, " it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, " without previous agreement for such purpose with the inhabitants, proprietors, or " possessors of the ground.

" And the United States hereby renounce for ever any liberty heretofore enjoyed or " claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine " miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions

" in America, not included within the above-mentioned limits ; provided, however, that " the American fishermen shall be admitted to enter such bays or harbors for the purpose " of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, " and for no other purpose whatever. But they shall be under such restrictions as may " be necessary to prevent their taking, drying, or curing fish therein, or in any other " manner whatever abusing the privileges hereby reserved to them."

Here then was the adjustment of the fishery question. The Americans were secured by the Treaty in the rights specially mentioned in the first article of that Convention, and under the limitations therein contained; and further, they distinctly renounced all privileges they had theretofore exercised or claimed, which were not contained in that Treaty. With regard to "fishing in the sea," it left the rights of Americans just as they had existed under the Treaty of 1783, though it curtailed their geographical limits for taking fish, while it gave new facilities for curing the same. Under the former Treaty they could not use the shores of Newfoundland, although they might catch and cure fish on the coasts, bays and creeks of the Magdalen Islands and the mainland, on condition that when settled, the consent of the inhabitants should be obtained for landing and curing. By the Treaty of 1818, they could both take and cure fish on the coasts of certain parts of Newfoundland, and a limited extent of Labrador, subject only to permission for drying and curing when the settlers permitted it on inhabited coasts, but the liberty of fishing and curing fish on the coasts, bays, and harbors of Nova Scotia, and that part of Labrador south-west of Mount Joly, near Natashquan River, and almost opposite to the east end of the Island of Anticosti, was altogether withheld.

But further, by this Treaty the Americans admitted the rightful act of Great Britain in withholding so much of the liberty for fishing formerly conceded to them as had given rise to "differences," and the United States *voluntarily renounced for ever any freedom, before "enjoyed or claimed," to take, dry, or cure fish on or within three marine miles of any other portions of the coasts, bays, creeks, or harbours of British America.* And, further, they stipulated that their fishing vessels shall have the privilege of entering such bays or harbours for the purpose of "*shelter,*" and of "*repairing damages therein,*" of "*purchasing wood,*" and "*of obtaining water ;*" and while stipulating for such privileges they distinctly agree that they shall go in "*for no other purpose whatever.*" "But " they shall be under such restrictions as may be necessary to prevent their " taking, drying, or curing fish therein, *or in any other manner whatever abusing* " *the privileges* hereby reserved to them."

The British Government, on the 14th June, 1819, passed the Imperial Act, 59 *Geo. III., cap.* 38, in the Appendix annexed marked B, which provided the authority of law for enforcing respect to the Treaty within British jurisdiction.

Thus matters stood in 1819.

American fishermen, following out the policy which has ever characterized them, in relation to the British fisheries, at once commenced a practice of trespassing upon our limits, and the British Government promptly sent a fleet to the fishing grounds to maintain the rights of her people, and American fishermen were compelled to respect those rights.

Trespasses would, however, occur as often as American fishermen thought that they could venture with impunity, and between the years 1817 and 1854, several United States fishing vessels were seized by Imperial and Colonial officers for infractions of the Treaty, and violation of the local Statutes regulating the same, which are hereinafter referred to. Many of them were condemned. Among the specific offences, for which numerous seizures and confiscations took place during this period, American fishing vessels were accosted and detained for the following reasons:—

1. Fishing within the prescribed limits;

2. Anchoring or hovering inshore during calm weather without any ostensible cause, having aboard ample supplies of wood and water;

3. Lying at anchor and remaining inside of the bays to clean and pack fish;

4. Purchasing and bartering bait, and preparing to fish;

5. Selling goods and buying supplies;

6. Landing and transhipping cargoes of fish.

Reference may be here made to the Imperial Instructions under which, antecedent to the Convention of 1818, American fishing vessels were excluded from British bays and harbors in North America, conformable to the Treaty of 1783. The following Admiralty order, for the governance of officers commanding vessels engaged in the protection of the fisheries and the prevention of illicit trade, signed by Rear-Admiral Milne, bears date the 12th May, 1817, which clearly shows the construction of their rights by the British authorities, and their active enforcement of such rights:—

"On your meeting with any foreign vessel, fishing, or at anchor, in any of "the harbors or creeks in His Majesty's North American Provinces, or within our "maritime jurisdiction, you will seize and send such vessel so trespassing to "Halifax, for adjudication, unless it should clearly appear that they have been "obliged to put in there in consequence of distress, acquainting me with the "cause of such seizure, and every other particular, to enable me to give all "information to the Lords Commissioners of the Admiralty."

Under this instruction numbers of American fishing vessels were seized, as previously stated, in Ragged Island Harbour, on the 8th of June, 1817, where they pretended to have sought shelter. The seizures were objected to on behalf of the United States Government, on the ground that these vessels entered from a lawful and necessary motive; but, on investigation, it was found that, as explained by His Majesty's Government, they were in the habit of occupying, and at the time of seizure, actually occupied this harbor without any legitimate excuse. The fishing schooners *Nabby* and *Washington* were seized in 1818, and condemned for being at anchor in, and hovering near, a settled British harbor. The *Java*, *Independence*, *Magnolia*, and *Hart*, were detained and confiscated in 1839, for being in harbor without lawful cause, and cleaning fish on deck. In 1840, the fishing vessels *Papineau* and *Mary* were seized and sold for purchasing bait ashore.

The right of excluding American fishing vessels from the Provincial ports bays, and harbors, except in cases of distress, was thus enforced just before the Convention, and some time after, for similarly resorting to British bays and harbors, except for the specified purposes arranged in the Treaty of 1818, to purchase wood and obtain water, and for shelter and repairs. This right was formally and continuously asserted throughout the intervening period to 1852, when the distinct offence of trading for supplies and transhipping fish cargoes became the subject of specific instructions. The Provincial officers in command of the Fisheries Protection Service were instructed by the Government of Nova Scotia, that United States fishing vessels, could not legally land freight, or frequent such ports and harbors for any purposes whatever not described in the Treaty. The following official direction, dated at Halifax, the 28th of August, 1852, is signed by the then Provincial Secretary, the Honorable Joseph Howe:

"No American fishing vessels are entitled to commercial privileges in "Provincial ports, but are subject to forfeiture if found engaged in traffic. The "Colonial Collectors have no authority to permit freight to be landed from such "vessels, which, under the Convention, can only enter our ports for the purposes "specified therein, and for no other."

The question arose on the practice of taking on board articles necessary to fishing operations—landing fish for transhipment—and refitting in ports and harbors at various places around the coast of Nova Scotia.

During the same year, Vice-Admiral Seymour applied to the Admiralty for special instructions as to the powers of naval officers to seize or interfere with United States fishing vessels resorting to ports or harbors for other than the purposes defined in the Convention. The matter was referred to the Law Advisers of the Crown. They pronounced the opinion that these officers were

empowered, under their instructions, to "seize" American fishing vessels only for the offence of fishing within the prescribed limits; but the vessels might be warned off, and compelled to depart, and could be seized by such officers or others, if so authorized by Order in Council,—the penalties or mode of procedure depending upon the local laws and regulations of each Colony. The legal opinion recited, adds that "independently of the express provisions of the statute," vessels infringing these laws, by resorting to ports or harbors for other than the purposes specified by the Treaty, might be warned and compelled to depart by whatever force is reasonably necessary by persons authorized by the Colonial Governors, or the British Admiral; and the American Government tacitly assented to this construction of the Treaty.

The Imperial and Colonial Statutes now in force, provide for regulations in pursuance of the Treaty to enforce the terms of the Convention; and instructions to Commanders of Marine Police Vessels, approved by Orders in Council, are such existing "Regulations" provided for by the Statutes as are deemed "*necessary to prevent*" foreign fishermen from abusing "*in any other manner whatever*" the privileges reserved to them by the Convention.

The foregoing references should suffice to establish that the restriction in question, and the construction of the Treaty of which the President is now complaining, is one justified by thirty-five years practice, up to the Treaty of Reciprocity.

In 1841 the Legislature of Nova Scotia submitted certain questions to the Law Officers of the Crown, in England, in connection with this question, as appears by Appendix C annexed, and received in reply the opinion of the legal advisers of Her Majesty, given in Appendix D annexed. The perusal of which appendices will explain in detail the substance thereof, and the conclusions which were arrived at.

Thus matters stood in 1841, up to which period the British construction of the Treaty of 1818, including their view of the headland lines, was enforced and acquiesced in, though reluctantly, by Americans.

It may be well here to state summarily what were the relative claims and rights of each party, as enforced by Her Majesty's Government.

They may be stated as:—

1st. Concurrent liberty of fishing within certain specified limits between the subjects of Her Majesty and those of the United States, subject to certain specified reservations, stated in the Treaty.

2nd. The privilege to American subjects to land, dry, and cure fish in certain districts named in the Treaty, also subject to certain qualifications, and to visit bays and harbours for the four objects named in such Treaty, viz :—For *shelter, repairing damages, purchasing wood,* and *obtaining water.*

3rd. Limits reserved exclusively to subjects of Her Majesty, and comprised within bounds of a marine league from the coasts, bays, harbors, and creeks—the line of exclusion and measurement on the three classes of indents last above mentioned being defined by straight lines drawn across from headland to headland. Such exclusive limits comprising all the shores on the British North American possessions, to which Americans were not given a concurrent right by the Treaty.

Americans renouncing all claims or pretensions that they had ever had except to those common privileges named in clause 1st. It may be stated that, upon the construction of Nos. 1 and 2, no differences of opinion exist.

Regarding the interpretation of No. 3, the American Government advances peculiar claims,—the most important of which is the basis of measurement on the mouths of bays, creeks, and harbors, and the general line of exclusion on our coasts. This line of demarcation between exclusive and common water, the United States contend—as in the tracing of the general coast line three marine miles from land—should at all bays continue to describe the outline of the shores of those indents as if they were sinuosities of the coast, and they deny the correctness of the principle of measuring from three miles outside headland to headland as claimed and enforced by the British without remonstrance up to about the period of 1841, and acted on up to the period of the Reciprocity Treaty.

These are in brief the main points involved in the dispute known as "The Fishery Question," and the raising of these points by the Americans, dates only from 1841, and after upwards of 23 years acquiescence in, the British construction of the Convention. Other minor differences, more or less tributary to this, have entered into the discussion, but this substantially included the only disputable ground of the controversy, prior to the present season, when, as appears by the President's message, fresh claims are set up with regard to their fishermen's rights of entering British Ports for *trading* purposes.

The argument of Great Britain on the main points is twofold :—

1st. That the accepted definition of bays, harbors and creeks, is that established by International Law throughout the civilized world, which distinctly

adopts a headland line, irrespective of the configuration of any part of the coast or the formation or extent of its indentations.

2nd. That the territorial and maritime jurisdiction of all nations, and particularly of the United States, is so clearly laid down as not to admit of any exceptional application, such as that claimed in connection with these fishing privileges in British America, in derogation of national rights.

3rd. That by the Treaty of 1818, Americans agreed not only *not* to fish within three miles of the coast, but further, they agreed not to fish within *three miles* of *bays, creeks* or *harbors,—i. e.,* three miles outside a line drawn from the headlands which form the entrance of a *bay, creek,* or *harbor.*

The legal authorities on this view are cited at length in a special Report by Mr. Whitcher, of the Marine and Fisheries Department, published in 1868, in reference to the Fisheries. Moreover, Great Britain maintains that in the Article of the Convention of 1818, Americans expressly *relinquished the liberty, before* "ENJOYED" *or* "CLAIMED," *to pursue their calling anywhere else within British jurisdiction than in the limits described in the Treaty.* The text thereof being as follows:—

"And the United States hereby renounce for ever any liberty heretofore en-
"joyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within
"three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic
"Majesty's dominions in America, not included within the above mentioned
"limits," thus adding by their own voluntary declaration—if that were necessary
—to the legal definition of exclusive fishing; besides solemnly withdrawing all pretensions of the kind theretofore advanced.

The Americans, shortly before the making of the Reciprocity Treaty, claimed an exceptional application of the Law of Nations, as regards bodies of water, such as the Bays of Fundy and Chaleurs, and other indents along the sea-coast of the British North American Colonies, in which the United States fishermen were formerly wont to pursue and capture the fishes of the sea, or to which they still resort to take bait. Yet, while they desired exceptional construction of Treaties, and more especially as applied to the Bays of Fundy and Chaleurs, their statesmen had to admit that the right of exclusion as claimed by us existed. Secretary Webster, 6th July, 1852, writes thus:—

"It would appear that, by a strict and rigid construction of this article,
"fishing vessels of the United States are precluded from entering into the bays
"or harbors of the British Provinces, except for the purposes of shelter,
"repairing damages, and obtaining wood and water. A bay, as is usually
"understood, is an arm or recess of the sea, entering from the ocean between

"capes and headlands, and the term is applied equally to small and large tracts "of water thus situated; it is common to speak of Hudson's Bay, or the Bay of "Biscay, although they are very large tracts of water."

"The British Authorities insist that *England has a right to draw a line "from headland to headland,* and to capture all American fishermen who may "follow their pursuits inside of that line. It was undoubtedly an oversight in "the Convention of 1818, to make so large a concession to England, since the "United States had usually considered that those vast inlets or recesses of the "ocean ought to be open to American fishermen as freely as the sea itself, to "within three marine miles of the shore."

Thus speaks Daniel Webster, an authority which patriotic Americans will scarcely dispute, and whose sound judgment compelled him to recognize the legal force of the British claims to the only point then in dispute, viz.:—*The Headland Line.*

Again, Chancellor Kent, in his able commentaries, lays down, as a rule, that Bays, such as Delaware Bay—(resembling in its characteristics and extent the Bay of Chaleurs) is wholly within the "territorial jurisdiction" of the United States, while the States of New Jersey and Delaware each exercises jurisdiction to its centre, and for three miles seaward from Capes May and Henlopen. The same rule applies to Chesapeake Bay, and the State of Maryland exercises jurisdiction over that tract of water, which is *more* than double the extent of Bay des Chaleurs. The same rule is applied to Massachusetts Bay, with an entrance fifty miles wide between Cape Ann and Cape Cod; indeed, the principle is applied in the United States universally, and however much American statesmen may regret the application of the rule on the bays of this Dominion, they cannot with reason deny its strict justice, nor their own renunciation of all claim to admission by the 1st article of the Treaty of 1818. Yet, from that time, up to 1854, the fishermen of the United States accepted the fact reluctantly, and frequently infringed within our limits when they thought they could do so with impunity. Several vessels were seized during the twenty years preceding 1854, outside the three mile limit from land, as construed by Americans, but within *headlands* and *bays*; and thus, by the British construction, violating the Treaty—the British Government enforced our Treaty rights, including the headland claims, up to 1854, with the exception of the Bay of Fundy, in reference to which they made certain exceptions of a temporary character, in 1845, upon the ground that it was not wholly a British bay, inasmuch as part of one side of it was bounded by American territory, and, to that extent, was an exception.

The question arose thus:—The American schooner "*Washington*" was seized while fishing in the Bay of Fundy, ten miles from land, on the ground that she

was fishing within a bay, which, under the terms of the Treaty, as construed by Her Majesty's Government, was illegal. Mr. Stevenson, the then American Minister at London, brought the subject under the notice of Her Majesty's Government, presenting, in an exhaustive manner, the American view of the case. The correspondence continued over a lengthened period. During the time, the Earl of Aberdeen, as well as the late Earl of Derby, then Lord Stanley, who succeeded him, presented the views which Her Majesty's Government entertained, and, in an able manner, replied to Mr. Stevenson, contending for the right to exclude—neither party succeeded in convincing the other; but the Earl of Aberdeen, in the usual spirit of conciliation which has marked the conduct of Her Majesty's Government on this question, while denying the *right*, consented to leave the question in abeyance, at the same time referring the particular case—viz.: The seizure of the "*Washington*"—to arbitration; and the arbitrators decided that the Bay of Fundy, being partially bounded by American territory at its mouth, was not, so far as the limits of that territory formed its bounds, a British bay. For further particulars upon this matter see "Sabine's Report on the Fishery Question," and "American State Papers," 1852 and 1853.

In July, 1853, when the question arose in reference to the rights of Americans to fish in the Bay of Fundy, Mr. Secretary Marcy called upon Mr. Rush, the then only surviving American Commissioner who took part in making the Treaty, to state what were his intentions at the making of the Treaty, and his views in reference thereto. Mr. Rush's attention was more especially directed to its application to the Bay of Fundy, being the locality in which the seizure took place which raised the question; and while stating his opinion that Americans had a right to fish in the Bay of Fundy, being, as he terms it, *an arm of the sea*, he uses the following language in speaking of the Fishery clause of the Treaty referred to:—

"They meant no more than that our fishermen, whilst fishing in the waters "of the Bay of Fundy, should not go nearer than *three miles* to any of those "*small inner bays, creeks, or harbors*, which are known to indent the coasts of "Nova Scotia and New Brunswick."

It will thus be perceived that while Mr. Rush coincided in the American view with regard to the right to fish in the Bay of Fundy, on the ground that it was an "*arm of the sea*," he clearly admits their exclusion from the smaller bays, creeks and harbors, and practically disavows the claim of a line three miles from the sinuosities of the coast now put forward by Americans, and thus far sustains the British construction in all but the larger *gulfs* or *bays*, which he claims to be "*arms of the sea*." See Rush's occasional productions, p.p. 289, 290.

He further shows, in his explanatory letter, written in 1854, that Britain enforced her view of the Treaty. He states that, "Great Britain, it may be "inferred, expected equivalents by yielding anything to us on this Fishery "question—it was the most important and pressing of any then pending. "How it ever became a question, and when, I have endeavored to show; "but once raised by Great Britain, *she adhered to it to the extent of instructing "her ships of war to order our ships away if found on what she claimed "as exclusively her fishing grounds.*"

This testimony, from the highest American source—the man who negotiated the Treaty—goes to show that Britain's construction of the Treaty was not a dormant one, but actively asserted.

In 1840, Mr. Stevenson, the then American Minister at London, remonstrated with Her Majesty's Government, through the late Lord Derby, who was then, as Lord Stanley, Secretary of State for Foreign Affairs, against the construction put upon the Treaty of 1818, but without effect—Lord Stanley maintaining the English construction of the Treaty, and, in his despatches to the Government of Nova Scotia, announced such decision. In 1843, after such announcement, the American schooner *Washington* was seized in the Bay of Fundy, ten miles from shore, for violating the Treaty by fishing in a British Bay; and later on, during the same season, the American schooner *Argus* was seized off the coast of Cape Breton, 15 miles from shore, but within the headland lines. The Honorable Edward Everett, who had succeeded Mr. Stevenson as American Minister, renewed, with the Earl of Aberdeen, the controversy raised by Mr. Stevenson. The American Commissioners contended that the framers of the Treaty, in referring to *bays* from which their fishermen were excluded, never contemplated the Bay of Fundy, which they claimed was an arm of the sea, but that it was the "*smaller or inner bays*" from which alone it was intended that they should be excluded; and this agrees with and confirms the then American view of their rights, as stated by Mr. Rush. Mr. Stevenson, in referring to the Bays of Fundy and Chaleur, speaks of them, and "*other large bays,*" as those from which the British were endeavoring unfairly to exclude them, while Mr. Everett, in dealing with the same subject, speaks of the Bay of Fundy as "*an arm of the sea,*" and not by the Treaty included "*amongst the coasts, bays, creeks, and harbors forbidden to American fishermen,*" clearly admitting the rule as laid down by Mr. Rush, that from the smaller class of bays they were excluded. See American State Papers, 1852-3. Mr. Sabine, who was employed by the American Government to make out a case for them in his very able Report, in speaking of the result of the controversy, says—

"The declaration of Lord Stanley, in 1842, that our Government *practically* "*acquiesced* in the new construction of the Convention, and the capture of the "*Washington*, in 1843, for an infringement of that construction, and for no other "offence whatever, were all calculated to impress them (Americans) with the "belief that the contest was at an end. Such, I confess, was the inclination of "my own mind." And he speaks of the despatch "which has recently been "received at the Department of State from Mr. Everett, our Minister at London, "with which he transmits a note from Lord Aberdeen, containing the satisfactory "intelligence that, after a reconsideration of the subject, although the Queen's "Government adhere to the construction of the Convention *which they have* "*always maintained*, they have still come to the determination of relaxing "from it, so far as to allow American fishermen to pursue their avocations in "any part of the Bay of Fundy, provided they do not approach—except in the "cases specified in the Treaty of 1818—within three miles of *the entrance* of "any bay on the coast of Nova Scotia or New Brunswick."

Lord Aberdeen thus put the case clearly that he upheld the right of total exclusion, but was willing, under the terms named, to relax that right. In his reply, Mr. Everett refused to accept what the Earl of Aberdeen conceded as *a concession*, and still claimed it as *a right*, while he admitted the exclusion of the smaller bays. In reply to Lord Aberdeen's suggestion that a corresponding concession might be gracefully made by the United States to British fishermen by admitting their fish in duty free,—he gives as a reason against it that the British had advantages, inasmuch as they were "*able to use the net and the seine* "*to greater advantage in the small bays and inlets along the coast, from which* "*the fishermen of the United States, under any construction of the Treaty, are* "*excluded.*" See American Senate State Papers, 1852-3.

It will thus be seen that, with the exception of the larger bays such as they class as "*arms* of the sea," the Americans practically admitted the British construction of the Treaty up to the making of the Reciprocity Treaty.

Then, as to the practice and the construction put upon the Treaty as well by the two contracting parties as by the British Colonies affected thereby, it may be here also stated that the Province of Nova Scotia supplemented the British squadron by several vessels during the years preceding 1845, and that during that time many seizures of American vessels were made, at points ranging from near the shore to a distance of upwards of ten miles from land, but within the headland three-mile line, on the ground that they were within headlands, many of which vessels were condemned and confiscated for such violation of our rights. In the American Senate State Documents, published in 1842-3, is found the following fact reported by the United States Consul at Pictou, viz.:—"The seizures in the course of the year were numerous. "The *Java, Battille, May-flower, Charles, Eliza, Shetland, Hyder Ali, Indepen-*

"*dence, Hart, Ocean, Director, Atlas, Magnolia, Amazon,* and *Three Brothers* "were among the number."

Thus matters stood when the Reciprocity Treaty of 1854 gave to the Americans the use, under certain restrictions, of our bay and inshore fisheries, and for which we were supposed to have received compensation by certain trade arrangements. This Treaty the United States Government put an end to of their own act, professing to believe that it was more to the advantage of the Colonies than their own. Doubtless, the Treaty, during its continuance, was beneficial to both countries, but it was not in Nova Scotia considered that they had received the equivalent in trade for what they correctly designated as "*their priceless fisheries.*" See Minute of Council of that Province of 26th April, 1864, as follows:—

"At the same time it is proper that the undersigned should take this "opportunity to express the inimical sentiment pervading this Province, that, in "the construction of that Treaty, fair consideration was not given to the "interests whose exhaustless fisheries of priceless value were given away "without the coasting trade, or the right to register Colonial-built Shipping, "having been secured in return to these British-American Provinces."

Such view was also participated in by New Brunswick. Yet, under the Treaty, an immense trade sprang up between the several Provinces and the United States, and promoted the prosperity of both countries during its continuance of eleven years. Unfortunately, the lamentable civil war broke out in the United States,—the *Trent* difficulty arose with the *Alabama complications,* and Americans ascribed to us sympathy for the South, and determined to punish the Colonies as well for England's sins as for what they were pleased to call our own; hence the notice to terminate the Treaty. It ended in March, 1866, after the year's notice for which it provided had been given by the United States Government. The then Provinces of Canada, Nova Scotia, and New Brunswick, with the approval of Her Majesty's Government, sent Delegates to Washington, in October, 1865, to endeavour, if possible, to secure its continuance, or else to effect some other trade arrangements which would meet the approval of both countries. In this they were unsuccessful. The Delegation held several conferences with the Committee of Ways and Means, and the record of their proceedings proves that there was really no desire evinced to renew commercial intercourse with the Provinces on any basis at all resembling the principles of reciprocal free trade. The efforts of our Delegates proved fruitless, and they returned about the middle of November following. On the 20th of February, 1866, a Royal Proclamation was issued by the Governor General of Canada, notifying American fishermen and United States citizens of the termination, on the 17th day of the ensuing month, of the fishing privileges which they

had enjoyed under the said Treaty, and warning them of the legal penalties which they would incur by trespassing upon the inshore fisheries of British America, belonging exclusively to Her Majesty's subjects. Her Majesty's Government felt disposed to allow the freedom of fishing that had prevailed since 1854 to continue for the season of 1866, on the distinct understanding that, *unless some satisfactory arrangement between the two countries should be made in the course of the year, such privileges would cease,* and all concessions made in the Treaty, just about to expire, be liable to withdrawal. The press of both countries during the year 1866 referred to the near probability of some concessions on the subject of the tariff being made through a Bill then under the consideration of Congress; the prospect of a satisfactory arrangement appearing to us to be an an additional reason for deferring the matter to another season.

The Colonial authorities, whilst acting in concert with Her Majesty's Government, who recommended for that year a temporary arrangement, in the hope of a renewal of the Treaty, were actuated by a sincere desire to deal with the actual situation in a spirit of conciliation and liberality towards their neighbours, irrespective of whatever inconveniences and injuries might attend deferment of the just and valued rights of Colonial subjects, but they experienced much difficulty in accepting the conclusion to which their assent was invited. A Minute of Council was adopted by the Canadian Executive, on the 23rd of March, 1866, setting forth the grounds upon which they believed that the proposed policy could neither be carried out so as to avoid serious and lasting injury to the interests of the country, nor attain the purpose it was designed to effect. The intrinsic worth of the fisheries was pointed out, and also their value to the Confederation of the British North American Provinces (then in prospective), as a staple of extensive trade with foreign countries,—a nursery for hardy seamen—and an inexhaustible resource for the industrial energies of our maritime population. The great and peculiar advantages which their exclusive working by British colonists would afford to the United Provinces was likewise dwelt upon.

The Memorandum in question proceeds to say that:—

"The Canadian Government receive this expression of the opinion of Her "Majesty's Government with the utmost respect; but they doubt whether its "adoption would not in the end produce most serious evils. They fear there is "no reasonable hope of satisfactory commercial relations being restored with the "United States within the year. They think the prospect of attaining this "result in the future will be greatly diminished if the United States fishermen "continue to exercise the rights given by the late Treaty. The withdrawal of "their privileges a year hence, will create more irritation then than now, as "having the character of retaliation. The step, if taken now, is plainly and

"publicly known to be the consequence of the act of the United States. They, "and not Great Britain, have cancelled the agreement, and voluntarily surren- "dered the right of fishing. The course suggested would certainly be regarded "by the American people as evidence of weakness on the part of Great Britain, "and of an indisposition to maintain the rights of the Colonies; while it would "disturb and alarm the Provinces. The determination to persist in encroach- "ments, and in resistance to law, would be stronger by the impunity of the past "year, and the danger of collision, when exclusion becomes necessary, would thus "be much increased; while the value of the right of fishing, for the purpose of "negotiation, would be diminished precisely in proportion to the low estimate "which the Provinces would thus appear to have placed upon it.

"The Committee would also respectfully submit to Her Majesty's Govern- "ment that any apparent hesitation to assert an undoubted national right will "certainly be misconstrued, and be made the ground for other and more serious "exactions, till such a point is reached as neither country can recede from with "honor."

The fears of the Canadian Government, and the almost prophetic words of their Minute have been realized by the pretensions and claims now put forward by President Grant. Yet, notwithstanding the strong opinions thus entertained, the Government of Canada, reluctantly acquiescing in the views of Her Majesty's Government, adopted the temporary expedient of issuing season licenses to United States fishing vessels, at a nominal tonnage rate, so as formally to preserve the right of sovereignty without occasioning any serious complications. Under this provisional system any vessels attempting to fish without licenses, and refusing to procure them from the cruising officers, were to be removed from the fishing grounds and punished by confiscation.

The Executive Governments of both Nova Scotia and New Brunswick gave to this expedient an unwilling assent, and on the express condition that it was to continue for only one year, and based upon the hope, as expressed by Her Majesty's Government, "*that some satisfactory trade arrangement might "be arrived at,*" and thus give to the American Government an opportunity to renew negotiations in case they desired to have the benefit of our fisheries.

This license system continued, throughout the years 1866 and 1867, with very unsatisfactory results. It proved quite inefficient in respect of enforcing compliance with its chief conditions, and equally ineffective with regard to the influence it was presumed to exercise towards inducing the United States Government to assist in merging it in some general commercial measure of a permanent and satisfactory nature.

The refusal of American fishermen to avail themselves of this privilege will be seen by the following statement, shewing the number of licenses issued each year since 1866, and inclusive thereof:—

In 1866 there were 354 licenses.
„ 1867 „ 281 „
„ 1868 „ 56 „
„ 1869 „ 25 „

In order to illustrate the complete failure of the license system, it is sufficient to note the simple fact, that during these four seasons, not a single American vessel was detained, although it was notorious that great numbers were continually invading our limits, even after repeated warnings, a large proportion of which vessels, when afterwards boarded, were found to be still unfurnished with licenses.

It will be perceived that in 1866, the first year of its adoption, the vigorous policy indicated by Her Majesty's Government, and a lively recollection of the numerous seizures and confiscations made by Her Majesty's cruisers, and the officers of the Nova Scotian Government, prior to 1854, for violation of our fishery rights, induced a large number of the American fishermen who resorted to the Gulf that season to take out licenses, notwithstanding that they were indulged in having three warnings given to them by our cruisers before seizure should be effected. The following year only about two-thirds of these took licenses, while in 1868, when it came to be understood that the effect of the instructions issued *requiring three warnings*, was practically to nullify the whole system, the number taking licences dropped, in 1868, to 56, and 1869, to 25.

This sort of protection was of no avail in promoting the interests of Colonial fishermen, but simply ensured Americans in the practical enjoyment of the same privileges which they had enjoyed under the Reciprocity Treaty, and it saved the United States' Government from all trouble and expense of maintaining a naval force in the Gulf.

It was, moreover, a manifest departure from the very terms on which the system was so originated, namely: "That any vessels attempting to fish without "licenses, will either be required to procure the license from the cruising officer, "or will be removed from the fishing grounds," (*vide* Minute of the Executive Council of Canada, dated 23rd March, 1866.) It also relieved Americans of any pressure such as might influence their Government to desire concessions of ours, as recognised up to 1854; and while it injured the business of Canadian fishermen, by affording facilities to foreigners, such as, together with a prohibitory duty on British-caught fish, enabled them to compete with our fishermen on unequal conditions, it also nullified whatever inducements to enter

into a new commercial treaty would otherwise be held forth by reason of an indirect counter-tax on their fishing and maritime industry.

The effect of continuing such a system was detrimental in other ways.

American fishermen committed other infractions of the Treaty of 1818; such as frequenting our harbors to transfer cargoes and take supplies, creating riots and disturbances, and setting the law at defiance,—witness the scene at Paspebiac, in Bay des Chaleurs, in 1869, and their refusal to pay harbor dues at Magdalen Islands, during the present season, as reported by Commander Lavoie in May last.

In his Annual Report for the year 1869, Commander Lavoie also says:—

"At Paspebiac there was a strong feeling against the crews of foreign "schooners, who, two or three times went ashore and committed all kinds of "disorder; so much so, that the inhabitants were obliged to put night watchmen "to guard their property, and secure themselves against the outrageous conduct "of these people."

In 1867, the Canadian Government called attention to this defective system, as it did also in 1868 and 1869, and a high authority on the subject of the Fisheries, spoke of it thus:—

"Since the termination of the Reciprocity Treaty of 1866, the system of "warnings to trespassers has not realized the anticipations of the Government by "which it was established in that year. Hence the desire of the present "Dominion Executive to resort to the more stringent steps proposed in the "minutes of the Minister of Marine and Fisheries." The same authority then gives the probable number of American vessels on the fishing grounds that season as 700. In 1868, the instructions were amended so as only to require one warning, and notwithstanding that if seizures were to be made at all, the danger was immeasurably increased to foreign fishermen; during the following year only 25 took out licenses, or about one in 28 of the estimated number of vessels on our coasts. In 1869, an authority well acquainted with the subject, called attention to the fact "That an unusual number of fishing "schooners, belonging to the United States, had arrived on the north shore of "Prince Edward Island, but that only a few licences had been demanded by "the masters, who objected to pay the licence duty of $2 per ton, and preferred "to run the risk of being caught within the three mile limits." The impression prevailed amongst the Americans that Her Majesty's Government, in their great desire to avoid anything of an irritating tendency, would not make any seizures; and, as a matter of fact, notwithstanding repeated violations, no seizures were

made. Under such circumstances the system of licences could not prove other than a most lamentable failure, and there was really no "substantial protection."

Another ill-effect attending this continued indulgence towards Americans is remarked by the same authority above referred to, that—

"Very few Colonial vessels are engaged in fishing, owing to the inter-
"ference of Americans and the almost prohibitory Tariff imposed in the United
"States, on fish imported in Colonial vessels—and *the Colonial fishermen, there-*
*"fore, in considerable numbers, man the American vessels.*"

It will thus be perceived that the Government of Canada, as well as Her Britannic Majesty's Government, had exercised a great degree of liberality and forbearance in dealing with the fishermen of the United States. They permitted a mere temporary arrangement, made in 1866, *for one year only*, to continue in the interests of the Americans for four, and until they found that they were practically setting our laws and regulations at defiance, and refusing to pay the licence fee on which they were admitted, while on their part we saw no prospect of that relaxation of their almost prohibitive duties on our fish and other articles of trade, which was the foundation of such policy. During the year 1869, the American Executive announced that negociations would be opened with Canada, negociations were nominally opened during that year on the invitation of the President, but it became evident at a very early stage that there was no real intention to submit any proposition that Canada could accept, and this was thoroughly verified, when, in December last (4th December, 1869), President Grant issued his annual message, in which the following appeared:—

"The question of renewing a Treaty for Reciprocity of Trade with the United
"States and the British Province on this continent, has not been favorably con-
"sidered by the Administration. The advantages of such a Treaty would be
"wholly in favor of the British Provinces, except possibly a few engaged in the
"trade between the two sections. No citizen of the United States would be
"benefitted by Reciprocity; our internal taxation would prove a protection to
"the British producer, almost to the protection which our manufacturers now
"receive from the tariff. Some arrangement, however, for the regulation of
"commercial intercourse between the United States and the Dominion of Canada
"may be desirable."

This brings the history of the question down to the present year.

The people of Canada felt that they had exhausted every reasonable means of conciliation and forbearance, and they viewed with very serious concern the baneful effect on our maritime population of the toleration granted to American fishermen. The prohibitive tariffs on British-caught fish in the United States as against the free admission of fish caught under the American flag, offered a

direct bounty to our people to serve rather in American vessels than Colonial. There was actually presented to them the example of subjects of a Republican power and citizens of a foreign state prosecuting their calling at the very doors, and in the exclusive limits of British subjects in Canada, who are themselves shut out of the markets of that country by a prohibitive tariff, adopted in the interest of *their own* fishermen, whilst ours cannot even enjoy unmolested their own exclusive privileges. Could the immediate influence of these circumstances be otherwise than seductive of the loyal attachment and personal enterprise of our sea-board population? It also discouraged the independent employment of Canadian fishing craft and provincial fishermen. It tempted our fishermen to catch and sell their fish clandestinely to United States owners of fishing vessels, who could afterwards market them in the United States, free of duty, as American-caught fish. This practice demoralized our fishing population, and accustomed them to violation of our own Customs' laws, as well as those of the United States. The residents were induced to connive at other infractions of our Treaty rights. The temporary and local advantages which these practices afford are of small account compared with the general injury done to our people. They militated also against our prospects of establishing an extensive fish trade with foreign countries, and others of the British possessions, and thereby developing the shipping and fishing industries of the Dominion, and creating a self-reliant and skilful class of fishermen and sailors, identified in property and affection with our national existence, and attached by past and present associations to British interests.

It became apparent that unless we wished to abandon our fisheries altogether that our Goverument must adopt a policy of a *national character*, and from the stand point of *the interests of the people of Canada.*

The Parliament of Canada supported that policy, and voted a sum to place on our coasts a marine police for the purpose of seeing that our laws should be respected and trespassers excluded. To this policy Her Majesty's Government assented, and sent out a sufficient number of vessels of war to enforce respect of our national rights. These duties have been performed both by the Imperial and Dominion vessels with marked prudence and judgment, and with great moderation and forbearance; and while insisting upon respect for British law, elicited from Commander E. P. Lull, of the United States Ship *Guard*, who was upon the station looking after American interests, no objection to their course, as appeared from the report of his mission

The result of the policy adopted this year in reference to the fisheries has been most beneficial to our fishermen: the exclusion of Americans from the three

mile limit has caused those principal feeding grounds of the mackerel, which are mainly inshore, to be reserved for our own people, and the result has been most beneficial to Canadian fishermen.

President Grant states that we have excluded Americans from our fishing grounds, and that the action of the Canadian authorities towards them during the past season has not been marked by a friendly feeling,—that we have legislated in a hostile spirit,—that we have not given their fishermen warning,—that Canada has arbitrarily seized American vessels without cause,—that we have refused to let them trade in our ports.

Let us now take up these charges and see what grounds exist on which to make them.

In reply to the first charge it may be admitted that we have not allowed American fishermen to come in and fish within the three mile limit, as the states has been the practice for many years past, nor were we in anyway required to give them any warning; but we did notify their Government, and the result thereof was a circular from Mr. Secretary Boutwell, a copy of which is in the Appendix E annexed, which gives ample warning to their fishermen of the consequences which will attend their disregard of our rights and privileges. And, in consequence of such notice, three vessels of war were sent by the American Government, under the direction of Commander Lull, to look after American interests, and to notify their fishermen, and that duty was ably performed by that officer; their fishermen were notified, and it has not been alleged that a single case has occurred in which American fishermen acted in ignorance of our policy, or in which hardship has occurred for want of notification. See Appendix F.

Now, to make this matter intelligently understood, we may state, that up to 1845, when the Reciprocity Treaty was entered into, the rights and claims, as interpreted from the English point of view, were enforced,—this gave American fishermen no right to fish either within three miles outside of headland lines, or in bays, creeks, or harbors, nor in any place within three miles of the shores.

The Reciprocity Treaty suspended that right of exclusion, and Americans were entitled to fish in all but our River and Lake Fisheries in common with ourselves. *They*, not *we*, gave notice and repealed the Reciprocity Treaty, which alone granted them these privileges, and they placed themselves, so far as Treaty rights were concerned, exactly where they were before it was made,—but out of forbearance towards their fishermen, we agreed that for one season, we would let them come in and fish by taking licenses, at a merely nominal rate, and that vessels found fishing without license, should be entitled to three warnings, as it

was supposed that fishermen might trespass in ignorance of the repeal of the Treaty, this was done in the hope that they would reconsider their policy about Reciprocity which they failed to do. We continued this system for four years, reducing the warnings to one, as the plea of ignorance of the Repeal of the Treaty, after three years, could not be set up by their fishermen. And, notwithstanding the hopes held out by the Resolution of Congress, authorising the President of the United States to open negotiations for trade arrangements with Canada, no result followed.

We felt that further forbearance in the hope of an arrangement of commerce was useless, and we gave notice in the early part of this year, of a policy of entire exclusion from the three mile limits—not from the *headland line*—not from the *ten mile bays*,—from all of which they were excluded prior to the Reciprocity Treaty, and which rule we might also have acted upon as the limit, on its termination, as that which would have placed us relatively in the same position as we were in before the Treaty was made.

Is that "unneighbourly"? What is there unfriendly about it?

We have property in our fisheries,—by a Treaty arrangement in 1854. Americans obtained the legal right, during its continuance, to participate in the enjoyment of them with our people, either party to be at liberty to terminate the Treaty after ten (10) years, on giving one year's notice to the other. The Americans enjoyed them for ten years, and then gave notice to terminate the Treaty, which has been done; and now President Grant charges us with "*unfriendly feeling*," and "*unneighbourly acts*," because we will not let them continue to enjoy our fisheries in return for the prohibitive tariff by which they exclude our fish. President Grant does not dispute our right to exclude American fishermen from within a line three miles from land—a line that he recognizes as our right even from the American view of the case, and as no interruption of an American fisherman, much less a seizure, has taken place outside that line, and as he admits in his Message that no seizure has yet taken place in consequence of trading, what possible ground of complaint can he make in relation to our acts hitherto? What a position to place his nation in—to see its first Magistrate thus wantonly attack and endeavor to place in the wrong a neighbour who has ever desired to maintain the most friendly relations with, and who has acted in a most generous and liberal manner towards his people in relation to the matters of which he complains.

If there is anything "*unneighbourly*" or "*unfriendly*" in the treatment of this matter, it lays at the door of the United States, in repealing a Treaty admittedly beneficial to both countries; but its repeal applied with peculiar

hardships to the smaller country. Under the Treaty existence of eleven years, trade had been largely influenced towards the United States. Our agriculturists found there a market for our coarse grains, and other productions of both the dairy and the farm; our lumbermen and milling interests, had made connections, and created establishments, based upon its continuance; our infant manufactories, slowly growing into existence prior to 1854, had then to come into competition in a manner with those of the United States, and many of them, in consequence, were closed up, and the business and trade of our country were largely directed into new channels, while the productions of our vast fisheries, which had previously found other foreign markets, were gradually drawn to Boston, as the centre of that trade. It need scarcely be said, that a policy which would seriously interfere with the continuance of such operations, must, for a time, at least, impede the prosperity of our country. Was it then a *friendly* or *neighbourly* act to repeal the Treaty, against our earnest wishes, and with the strictest limitation of time which it entitled Americans to give us, and thus cause serious losses to the interests referred to? But they did more than that—they at the same time increased the duties on our principal articles of production, varying from 25 to 80 per cent., and in the case of coal, to 100 per cent., so as to almost exclude them from their markets. They allowed their feelings of hostility to us, because of our connection with England, and our imputed sympathy with the South, to induce them to aim, by adopting retaliatory measures, at punishing us. Yet their chief magistrate *complains*, because of our exclusion of their fishermen from our *Inshore Fisheries*, our rights to which have never been disputed.

President Grant also states that we have failed in the performance of our *neighbourly* and *friendly* duty, because we did not give, as he states, American fishermen notice.

In reply, it is observed, that by the act of their own Government, in repealing the Treaty, the position of American fishermen in our waters was changed from one of *right* to one of *sufferance*, and it was no part of the duty of the Government of Canada to notify them. Our Government, through the British Minister at Washington, notified the United States Government, and it was the duty of their executive (not of ours) to notify the American people, and they performed that duty. See Secretary Boutwell's circulars, dated respectively 16th May, and 9th June, in Appendices E and G. The earliest of these circulars, by the United States Treasury Department, having stated that trespassers would be seized after 24 hours warning, while the statutes had abolished such warning, an amended one was issued after the error had been pointed out by the Canadian authorities, in order to prevent American fishermen from being misled and surprised by an oversight of President Grant's advisers. Thus the very

laws were acknowledged and the restrictions acquiesced in of which the President now complains.

Again, it may be observed that, in addition to the notices thus given of the policy which the Government of Canada had decided upon, with the concurrence of the Imperial Government, it is evident that President Grant was informed of the instructions which were given to our officers, as would appear from the circulars referred to; and the people of Canada have yet to learn that the American Government ever took exception to the policy of exclusion which we adopted, or the instructions under which such exclusion was carried out, and yet though the President acted upon it in May last, he now for the first time discovers that our acts in relation thereto are "*unfriendly*" and "*unneighbourly.*"

In Mr. Secretary Boutwell's circular, he distinctly tells American fishermen that they are excluded from the inshore fisheries, and that they are bound to respect "the British laws and regulations for the regulation and preservation of "the fisheries." He also informs them that vessels were being fitted out by the Government of Canada for the protection of those fisheries "*against illegal encroachments by foreigners,*" and used these words:—

"It will be observed that the warning formerly given is not required under "the amended Act, but that vessels trespassing are liable to seizure without such "warning."

There is no protest or allegation against either the right or the justice or the neighborly character of the act, and if the President is now right in his assumptions of the spirit of the policy referred to, it was his duty in May last, in the interests of American fishermen, to have taken such steps as would have brought the "*unneighbourly*" or "*unfriendly*" acts under the notice of the Government of Canada, in order that the cause of complaint might have been, if possible, removed. That President Grant did not do so is evidence that his present construction is an afterthought, probably inspired by the recent visit of General Butler to Washington.

He then refers to—

"The Statutes of the Dominion of Canada," as "assuming a still broader "and more untenable jurisdiction over the vessels of the United States," and creating the impression that the Legislation of the Dominion, in relation to the fisheries, is of a novel character.

He also says—

"It is not known that any condemnations have been made under this "Statute. Should the authorities of Canada attempt to enforce it, it will become "my duty to take such steps as may be necessary to protect the rights of the "citizens of the United States."

Now, it is much to be regretted that the Chief Magistrate of a great nation should, in a prominent State Paper, exhibit such ignorance as is here displayed when referring to the legislation affecting this subject.

What are the facts ?

After the Treaty of 1818 was concluded, it became necessary for the British Government to enact a law of the Imperial Parliament to enforce, on the coasts of British America, respect to the provisions of that Treaty. Such a law was passed by the Parliament of Great Britain on the 14th of June, 1819, and has been in force ever since that time. Under it the Treaty rights have been enforced, seizures of foreign vessels have been repeatedly made, and the same proceeded with to trial, and, in many cases, to condemnation.

The Parliament of Nova Scotia, in 1836, passed an Act, based upon the Imperial Act of 1819, which received the sanction of the Imperial Government, under which that Province provided the legal machinery for enforcing respect to their territorial jurisdiction of three miles from the coasts, bays and harbors of that Province; and subsequently, in 1840, adopted an amended law, which is still in force.

Under these laws, the first of which was in active operation for twenty-eight years, numerous seizures of American vessels were made for encroaching and violating Treaty rights, and our rights of exclusion were repeatedly enforced up to the period of the passage of the Reciprocity Treaty.

A similar law was passed both in New Brunswick and Prince Edward's Island, and in 1868, after the formation of the Dominion, a law, almost the exact transcript of the Nova Scotia law, was passed by our Parliament for the "*Regulating of Fishing by Foreign Vessels.*"

As the law now stands it differs from the Nova Scotia Statute only in this: that twenty-four hours' notice was done away with, inasmuch as it defeated the object of the law, and vessels found hovering inside the limit could be seized at once if they refused to depart when notified, thus assimilating its provisions in that particular to the Imperial Statute of 1819, which has been in force for fifty years. Any other changes in it are in the interests of foreigners. Indeed, it may be stated that the only point in which the Dominion Statute varies at all from the law previously in force, although President Grant states that they assume

"a *broader and more untenable jurisdiction over the vessels of the United "States*" is in the direction of *leniency* and *neighbourly feeling*, and I will here quote from the decision of the venerable and respected Chief Justice of Nova Scotia, Sir William Young, C.B., in his able judgment, in the case of the "*Wampatuck*," delivered on the 6th instant, seized for persistent violation of the Fishing Laws, in which he says:—

"Neither the Government nor the Courts of the Dominion would favor a "narrow and illiberal construction, or sanction a forfeiture or penalty inconsistent "with national comity and usage, and with the plain object and intent of the "Treaty. The rights of a people, as of an individual, are never so much respected "as when they are exercised in a spirit of fairness and moderation. Besides, by "a clause of the Dominion Act of 1868, which is not to be found in the Imperial "Act of 1819, nor in our Nova Scotia Act of 1836, which formed the code of "rules and regulations under the Treaty of 1818, with the sanction of His "Majesty, the Governor General in Council, in cases of seizures under the Act, "may, by order, direct a stay of proceedings; and, in cases of condemnation, may "relieve from the penalty, in whole, or in part, and on such terms as may be "deemed right—any undue straining of the law, or harshness in its application "may thus be softened or redressed; and, although I was told that little confidence "was to be placed in the moderation of Governments, it is obvious that confidence "is placed in it by the authorities and by the people of the United States; and "it is a fact, honorable to both parties, that the naval forces employed on the "fishing grounds in the past season, have acted in perfect harmony, and carried "out the provisions of the Treaty in good faith. The organs of public opinion "indeed, in the United States, of the highest stamp, have denounced open and "deliberate violations of the Treaty in terms as decided as we ourselves could "use."

And in this Chief Justice Young expresses the sentiment of Canada.

Yet, in the face of these unanswerable facts, the implication is created, *that the legislation is novel*,—that it has never yet been acted on,—and President Grant threatens us if it shall be.

He then refers to the rights of American fishing vessels to enter British ports for other purposes than those named in the Treaty, and again implies that a *new* and *strained construction* of Treaty rights is attempted to be enforced. Here again President Grant exhibits great ignorance of the question, inasmuch as the British construction of that part of the Treaty of 1818, that relates to foreign fishing vessels going into British ports, expressly limits them to "*shelter and of repairing damages therein, of purchasing wood and obtaining "water*."

And in all the discussions which have taken place in relation to the fisheries, it may be stated, that no American Statesman has ever before ventured

to claim a right for their fishing vessels to enter our ports for trading purposes, or for any other purposes than those named in the Treaty.

That the limitation to these four objects was strictly enforced after the Peace of 1812, and before the Treaty of 1818, appears by Earl Bathurst's despatch to Vice-Admiral Keats, dated 17th June, 1815. (See appendix.) Also by the extract from Rear Admiral Milne's despatch of 12th May, 1817, and the letter of the Provincial Secretary of Nova Scotia, 28th August, 1852, before quoted, as well as by a number of judicial decisions in the Province of Nova Scotia, between 1832 and 1853.

Yet, in the face of a clear recognition of a practice of over fifty years (less the period it was in abeyance by the Reciprocity Treaty), President Grant states that "so far as the claim is founded on an alleged construction of the Treaty of "1818, it cannot be acquiesced in by the United States," and "it is hoped it will "not be insisted on by Her Majesty's Government."

He then refers to the pretensions put forward by the British Commissioners at the time of negotiating the Treaty, and implies that similar pretensions to those now enforced were then put forward by the British Commissioners, resisted by the Americans, and finally abandoned.

That many pretensions were put forward by the representatives of both Governments in negotiating the Treaty of Peace at the close of the war of 1812 is true, but it is also true that the unreasonable pretensions of the American Commissioners caused the Treaty of Peace to be closed with the fishery question still unsettled; that, in 1815, as appears by Lord Bathurst's despatch, His Britannic Majesty enforced and maintained the British view of the question, and when a Treaty was made in 1818, in reference to the fisheries, the Americans clearly limited themselves to the right to enter British ports for only the four objects stated.

Is President Grant not aware that American vessels have been repeatedly seized for its infringement? And that the practice has been acquiesced in by the United States? Does he know that his statements in the message referred to, professing to give an accurate account of what took place between the several Commissioners of Great Britain and America, at the making of the Treaty of 1818, are not strictly accurate? If he does not know all these things, it may be well to tell him that he has not correctly reported the circumstances to which he refers. In addition to the authorities before quoted, reference may now be made to the original protocol submitted by the American Commissioners, Messrs. Gallatin and Rush, in London, on the 17th September, 1818, to the British Commissioners Messrs. Robinson and Golbourn, in these words:—

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"And the United States hereby renounce any liberty, heretofore enjoyed or "claimed by the inhabitants thereof, to take, dry, or cure fish on or within three "marine miles of any of the coasts, bays, harbors and creeks of His Britannic "Majesty's Dominions in North America, not included within the above men- "tioned limits—provided however, that the American fishermen shall be admitted "to enter such bays and harbors for the purpose only of obtaining shelter, wood, "water, and *bait*, but under such restrictions as may be found necessary to "prevent their taking, drying, or curing fish therein, or in any other manner "abusing the privileges hereby reserved to them." See British and Foreign State Papers, Vol. 7, page 178.

The British Commissioners submitted, on the 6th October following, a counter-project which contained several clauses to which the Americans took exception, and amongst them two which may seem to bear upon this subject, and to which we presume the President had reference, and of which the text is as follows:—

"It is further well understood that the liberty of taking, drying, and curing "fish granted in the preceding part of this article, shall not be construed to "extend to any privilege of carrying on trade with any of His Britannic Majesty's "subjects *residing within the limits hereinbefore assigned for the use of the "fishermen of the United States.*"

The next clause also proposed to limit them to having such goods on board as "may be necessary for the prosecution of the fishery or the support of the fisher- "men whilst engaged therein, or in the prosecution of their voyages to and from "the fishing grounds."

If the President had searched the State Papers within his reach relating to that subject, he would have found that no claim of *right* or even of *liberty* to trade was ever put forward by the American Commissioners. There is no record of such a claim ever having even been discussed between themselves in connection with the fishermen of his country or their privileges; on the contrary, such a pretension on their part would have been met with a refusal on the part of the British Government, as may be gathered from the correspondence between the two Governments, between 1815 and 1819, upon the general subject of the navigation and trade generally, between the Colonies and the United States, and in consequence of which, in a spirit of retaliation, the United States passed their celebrated Navigation Laws. President Grant should have perceived that the first article above quoted, which the British Commissioners submitted, was expressly confined in its operation to the "*limits*" thereinbefore "*assigned "for the use of the fishermen of the United States.*"—*i.e.*, on that part of the "southern coast of Newfoundland which extends from Cape Ray to the Rameau "Islands on the western and northern coast of Newfoundland, from the said Cape "Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on "the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast

"of Labrador, to and through the Straits of Belle Isle, &c., and thence northerly "indefinitely along the coast, without prejudice, however, to any of the exclusive "rights of the Hudson Bay Company," and that it could not in any way be construed to apply to the ports of Nova Scotia, Prince Edward Island or New Brunswick, nor indeed to any but those named in the "*limits*" specified—while, on the contrary, in the general ports, the objects to which they are expressly limited, as the only purposes for which they shall visit them are "*shelter*," "*repairing damages*," "*purchasing wood*," and "*obtaining water*."

It is true that the American Commissioners objected to those clauses, not because they claimed a right to trade in British ports, but because the boarding and examining cargoes of American vessels by British cruisers would be "both "troublesome and vexatious"—here are their own words :—

"The clauses forbidding their spreading of nets, and making vessels liable "to confiscation in case any articles not admitted for carrying on the fishery "should be found on board are of that description, and would expose the fishermen "to endless vexations."—same Vol., page 199.

As the question of the fisheries was one that had been the cause of great trouble and anxiety to both countries, the then pending negotiations were entered into with a view to obtaining a settlement thereof by mutual concession and compromise, and the British Commissioners submitted a "*second counter-project*," which was accepted by the Americans, and now forms the first Article of the Treaty of 1818.

From this the word "*bait*" was omitted, and though the smuggling clause was also omitted as being "vexatious," they clearly limited themselves to the four objects, for which alone they could enter British ports "for shelter and repairing damages, and purchasing wood and water." How can it then with reason be claimed that a solemn agreement can thus be set aside, and fresh pretensions be set up, at variance with not only the spirit but the letter of the Treaty, more especially when the American Commissioners evidently put forward the limitation to enter ports for four objects alone, as a means of compromise, from their point of view, to meet the object desired in a less objectionable way to their people than that proposed by the British Commissioners; and in their official letter to Mr. Adams, the American Commissioners informed him of the conclusion of the Treaty, and admitted that the proposition of limitation to four objects, and to those only, was made by themselves.

The omission of any liberty to visit our ports to procure "*bait*," practically settles this, *the main question of Trade*, as objected to by Canada. As one great object of the fishermen in visiting our ports, and against which we object, is to

obtain "*bait*" for which they trade their smuggled goods, and without which the prosecution of their voyages is practically defeated. It thus appears clear, that so far from this pretension having been discussed by the Commission, and subsequently abandoned by the British Commissioners, on the grounds stated by President Grant, is not substantially correct; true, the clause relating to the searching of American fishing vessels for goods not necessary for the fisheries, or the illegality of their having them on board was abandoned, but not the chief object of that trade (*bait*), nor was any right given to enter our ports for trade, nor was even a claim to such effect set up by the American Commissioners. Yet President Grant states that it is a construction of the Treaty he cannot admit, and if the right is exercised under the Statutes of the Dominion, he cannot but regard it as unfriendly, and in contravention of the spirit if not the letter of the Treaty.

We might offer the President many other proofs of our practical friendliness towards American fishermen, but confine ourselves at present to two very notable and peculiar instances:—

Under Article 1 of the Convention, so strangely misquoted by President Grant, United States citizens may *take fish* on the shores of the Magdalen Islands, but they cannot use the land for carrying on fishing operations. It so happens, therefore, that the privilege is practically inoperative. But rather than spoil their voyages, the Canadian Government have allowed them year after year to land their boats and haul their seines, and, in fact, enjoy every facility for prosecuting the inshore fishing in common with Canadians. These privileges have been generously allowed to them at great inconvenience and loss to ourselves. Their manner of fishing—the great extent of their machinery—the numerous fleet of vessels crowding together into the bays and harbors during the fishing seasons, the numbers of disorderly persons among their crews,—these things have every year caused serious damage to the pursuits of British fishermen, and have exposed the lives and properties of the peaceable inhabitants to violence. The Canadian Government have, for many years past, been obliged by such occurrences to maintain an armed force on the premises, and to incur considerable trouble and expense in upholding the Customs, Navigation and Fishery laws among these itinerants. True, the simple remedy of entire seclusion might have been adopted. Is it because we have done otherwise that our conduct is "unfriendly?" Then, in the case of the settled parts of the Labrador coast—the Treaty allows American fishermen to *dry and cure* fish in certain "unsettled" places on the southern coast of Labrador, in Canada. The principal places frequented by United States fishermen have long been occupied by settlers and resident fishermen. Yet, Americans have never

been prevented from drying and curing their fish, and even erecting establishments on shore, the Canadian Government having always considerately provided for this liberty by granting temporary occupation of the soil to British subjects with such reservation, instead of subjecting United States citizens to the option of the "inhabitants, proprietors, or possessors of the ground," as specified in the Treaty. Is it because they have been thus liberal and considerate, that the American Government and United States fishermen and people, through their Chief Magistrate, accuse us of being "unfriendly?" If such forbearance and liberality in the case of the Magdalen Islands, and such amicable precautions in the case of the Labrador coast, are not worthy of being considered friendly and neighbourly, we might as well save ourselves the trouble and loss which attend them. We shall thus gratify our own people who suffer from them, and also promote our own fishing interests. The American fishermen will, doubtless, be duly grateful to President Grant and their representative friend General Butler, for thus befriending them in a manner so much more practical and appreciable than we can ever expect to do!

Thus much in reply to the statements of President Grant, in relation to our treatment of the Fishery Question.

Reference may now be made to his statements affecting the "*Navigation "of the St. Lawrence.*"

President Grant states that "a like unfriendly disposition has been mani- "fested on the part of Canada, in the maintenance of a claim of right to "exclude the citizens of the United States from the navigation of that "river."

Let us ask President Grant when did ever the Canadians exhibit such a feeling as he ascribes to them?—or on what occasion did they ever refuse? We know of none; and it may be safely asserted that no refusal was ever at any time made by the Canadian Government to any application for liberty to use the St. Lawrence, either on the part of the American Government, or of any of its citizens. Nay, more than this—the Welland and St. Lawrence Canals, built at a cost, by us, of seventeen millions of dollars—to which even President Grant will not pretend to have any claim—have been as freely used by the tonnage of the United States as they have been by our own; and without them, the navigation of the St. Lawrence could not be utilised. The following extract from two leading Canadian papers may be here referred to, to show to what extent Americans can use our canals:—

"From a return just published, it appears that the total amount of American "shipping that enjoyed the "freedom of the St. Lawrence" for the year ending

" 30th June last, comprised 2,884 steam and sailing vessels, having a total tonnage " of 765,552 tons. This immense fleet passed the Welland Canal; nor does it " appear that any applied for passage through that most useful of canals and " were refused. The Americans already have the "freedom" that commerce " demands, upon paying tolls necessary for the maintenance of the public work, " the same as British vessels. Surely, they do not ask that Canadians should " construct and maintain a work of such magnitude for their benefit, and " give them a gratis passage into the bargain."

The following is a comparative statement of the number and tonnage of vessels arrived at the Port of Montreal during the years 1869 and 1870 :—

VESSELS ARRIVED FROM SEA.

| | No. | Tons. |
|---|---|---|
| 1870 | 584 | 292,699 |
| 1869 | 480 | 251,557 |
| Increase in 1870 | 104 | 41,142 |

VESSELS ARRIVED FROM THE UNITED STATES THROUGH THE CANALS :—

| | Sailing Vessels. | | Steamers. | |
|---|---|---|---|---|
| | No. | Tons. | No. | Tons. |
| 1870 | 539 | 39,841 | 15 | 5,543 |
| 1869 | 363 | 27,438 | 2 | 904 |
| Increase 1870 | 176. | 12,403 | 13 | 4,639 |

| | 1870. | |
|---|---|---|
| Increase vessels from sea | 104 | 41,142 |
| „ „ United States | 189 | 17,042 |
| Total increase | 293 | 58,184 |

Thus it will be seen that the Americans have used our canals pretty extensively, and that during the year just closing they have done so to a greater extent than ever before. Had it not been for the Canadian canals these American vessels could not have used the St. Lawrence route, or must have adopted President Grant's suggestion, and kept to the lakes and river—a plan which, involving as it would, a plunge over the Falls of Niagara, might have been found inconvenient.

This use too has been available for the transit of war materials, as well as in the prosecution of all commercial objects. The obstruction met with by the Canadian Steamer "*Algoma*" at the Sault St. Marie Canal last summer presents a striking contrast to our liberality. Is there a single other canal in the United States that the policy of his country will permit our people to use? A notable

instance of the contrast between American policy and our own, may be adduced in the carriage of lumber between Ottawa and New York—a portion of which is done by American vessels, and a part by Canadian. American canal boats, in competition with our own, navigate our Ottawa and St. Lawrence canals and rivers, and can go, without breaking bulk, to White Hall or New York; but so soon as a British canal boat reaches the American frontier, she is stopped, and is not permitted, by the restrictive policy of American Navigation Laws, to go any further. Is that neighbourly treatment?

He complains again that:—

"The foreign commerce of our ports on their waters is open to British "competition, and the major part of it is done in British bottoms."

Whether this is so or not, it is needless to discuss here; but if it is so, it is because of the unsound policy of protection which is now dominant in the United States, and in despite of enormous charges imposed in their ports upon our tonnage. In our ports there are, comparatively, no tonnage dues to pay—in American ports, a charge of 30 cents gold per ton is exacted, and Customs Officer's fees, ranging, for each entry, from $1 50 to $3; the same for each clearance, to be avoided only by taking out a coasting licence, which, of course, can only be done by an American vessel, as ours are excluded from their coasting trade. The effect of this system is a practical violation of the Treaty of Commerce by which Americans agreed to place our vessels on the same terms as their own in their ports with regard to charges; but while professing to do that, by charging fees on all vessels entering and clearing at their ports, without distinction, they except vessels having coasting licences, which, by their laws, can only be obtained by their own vessels. Is this "neighbourly," or is it just? And does it not possess the aspect of avoiding the spirit of the Treaty while professing to keep it to the letter? Again, in the prosecution of the western trade, Americans have, by their construction of customs regulations, placed our vessels at a great disadvantage as compared with their own, in a number of ways, which are anything but "neighbourly." And yet, in spite of it all, the President says "we monopolize "the trade." If we do, it is not because of restrictions which we place upon American commerce, for their vessels have been treated precisely as our own, but because our ships cost us less, as we buy or build them where we can get them cheapest, and they are worked more cheaply—we have less taxes to pay, and fewer restrictions placed upon our vessels; and also, because our geographical position in connection with the great grain-growing States of the west makes our St. Lawrence route to the sea, upon which our inland vessels are mainly engaged, the more desirable and cheaper one. The President's reference to the "*Mississippi*" is unfortunate for his case. He would have done well to have read up the

history of that transaction before referring to it. He would then have found that Mr. Rush, the American Minister at London, together with Mr. Gallatin, refused to renew the right to British subjects to navigate that river, except upon condition of receiving *compensation* in *fishery concessions entirely beyond its value*, and in the official of letter the former to Mr. Adams, the American Foreign Secretary of that day, he took great credit to himself for having successfully got rid of what he alleged to be a very objectionable feature in the Treaty of 1783, and it was one of the points which the British Commissioners, for peace sake, conceded. Still the President has the hardihood to put that case forward in this discussion, as a ground upon which to found their claim to a common right to navigate the St. Lawrence. The illustrations given by President Grant of instances of rivers such as the "Rhine," the "Danube," the "Douro," and others named in his message, as having been thrown open, are not appropriate, and have but little analogy to the case of the St. Lawrence. Some of these, as in the case of the Danube, were thrown open after the termination of a mighty struggle, and others were made the subject of mutual arrangement at international conventions on grounds of public necessity and interest, while others were made the subject of international negotiations, based upon compensations given by one and received by the other of the nations interested. But where is the compensation here? Americans want the navigation of the St. Lawrence; what do they offer for it? They cannot use it without our canals! Will they offer us the use of their internal river navigation and canal system for it? Will they offer us some compensation in trade arrangements? Let us hear what it is to be, for we must have a "*quid pro quo.*" A portion of the press of the United States would seem to indicate that it is sufficient for them to take our coal, fish, lumber and salt free of duty, on condition that we take theirs, and give them up the free right to navigate our rivers and canals, with a condition that we shall deepen and enlarge the latter; and allow them a common right in all our valuable fisheries. This seems to be the measure of compensation which they offer, but which we most respectfully decline. We tell them, in reply, that our market in Ontario, for the coal of Ohio and Pennsylvania, is quite a compensation for the market which their New England and seaboard States offer to our Nova Scotia coal miners, and free admission of coal cannot be long resisted in the latter States. As to *lumber* and *fish* they must have them both—the production is not more than can supply the demand—their own forests are either too remote, or are comparatively exhausted to meet the home and foreign demand for lumber; and as for *fish*, their fishermen cannot supply the growing demand without either poaching on our preserves, or purchasing from our fishermen. As a proof of this, (mackerel), the fish they most prize, and the feeding grounds of which are

mainly on our limits, have advanced in price from thirty to forty per cent. in five years,—and as to salt, the advantage would be entirely on the side of the Americans; besides, any taxes placed upon either of these articles of prime necessity, simply enhance the price to their own people, who are the consumers. Is it not, therefore, apparent that the admission of the articles they name will inure quite as much, if not more, to the benefit of their people as of ours. and if that is so, then what has been offered for the navigation of the St. Lawrence?—the right to use our canals?—participation in our fisheries—our registry of shipping—and our coasting trade? They say they are willing to make a reasonable arrangement! Let them state what it is, for we have heard nothing like reason from them yet in connection with these subjects, since the repeal of the Reciprocity Treaty.

President Grant states:

"That there are eight States with 17,600,000 people upon these waters "discharging into it," and he says:

"The United States are ready to make any reasonable arrangement as to "the navigation of the St. Lawrence, which may be suggested by Great Britain."

If this was really so, why was the Reciprocity Treaty repealed? If it is so now, why refuse last year to renew it, or offer some fair trade arrangement? President Grant refused to do this, and yet pretends to be ready to make any reasonable arrangement. They want our fisheries,—they want the use of our canals, and the navigation of the St. Lawrence; and yet, with such professions upon their lips, they refuse the only thing that they have to offer that is of any value to us. The fact is that, in repealing the Reciprocity Treaty, the Government of the United States aimed at punishing us, and starving us into annexation, as some fondly imagined they would do, and in which results prove they have been disappointed. Since 1867, our trade has steadily and largely increased—manufactures have multiplied in our cities, towns and villages—our agriculturists never were more prosperous than at present; and, in spite of the enormous duties which meet them in the American markets, our lumbermen have grown wealthy, and our fishermen are becoming more hopeful. Though United States laws preclude us from American registry or employment for our ships in their coasting trade, our tonnage has enormously increased in the face of a large diminution in theirs—our revenue is abundant, with moderate taxation—our country, it cannot be denied, is in a most prosperous condition—and all this, in the face of legislation in the United States, which was thought likely to work most injuriously to us—notwithstanding that Americans have been tolerated in the enjoyment without any compensation of our valuable fisheries—

our canals—our river navigation—our registry of shipping—and our coasting trade,—they now threaten us with *retaliation,* unless we give up everything that we still possess, and for what? Simply nothing.

They threaten to "*Suspend the Bonding system, and exclude the Vessels "of the Dominion from United States Waters.*"

They do this, too, without communicating with us, and upon the assumption that we have acted unfairly by their fishermen, and, influenced by the statement of *political* demagogues that we have refused to transmit their fish in bond from our ports. We have not done this. No application has ever been made for such a concession that we are aware of, though it is true that we contend that it is contrary to the Treaty to have their fishing vessels frequenting our ports for any other than for the four objects named therein. What will the thousands of your own citizens, who are interested in the transit trade across your country from the Atlantic to the Lakes, say to this? What will the States of New York and Vermont say to loss of business on the Erie and Burlington Canals? What will those interested in your great lines of railroad say? And if experience teaches us anything of your institutions, they count for something where party tactics and political influence are concerned. More than all, what will the 17,600,000 people of the Western and North-Western States, of whom you speak, say to it? What will the Southern States say to your thus paralyzing the trade in their great staple article of production —*Cotton?* What will the great manufacturing interests of New England and the middle States say when you arrest the immense trade which has grown up between us? Will the people of Portland be benefitted by the removal of the winter terminus of those magnificent Canadian Ocean Steamers of the "*Allan Line*" to Halifax or St. John? and, as soon as the Intercolonial Railway is completed—and we hope it will by another season—this can be closed without much inconvenience to our people. Will it please the people of New York, Boston, Philadelphia, and your other leading seaboard cities, or will it promote the interests of the Public of the United States to shut out, by your *non-intercourse system,* all those established lines of British steamers by which your *communication,* your *commerce,* and your *postal service* is now carried on with Europe? You now tax our merchants with oppressive charges and restrictions in the bonding system which do not exist in ours; and, doubtless, if you carry out your threat, it will cause us such inconvenience as generally attends any considerable interruption to trade; but we can survive it, as we did the loss of the Reciprocity Treaty. We are rather inclined to think that we will prosper quite as much under it as you will. Our tonnage can always find employment sufficient and profitable, and if not employed in carrying grain from Chicago and your Western

grain-producing States, the sea is open to them, and employment abundant; but what about the crops of the West? Can the Erie Canal, of which such great complaints are now made of its want of capacity, as well as of the insufficiency of its water supply, if its capacity was otherwise increased, *do* your work?—and if it cannot do it now, how can it possibly meet the growing necessities of that fertile western region? Now, suppose we really were to do what you charge us with, and act in an "unneighbourly" manner—suppose we closed *our* canals for a single season against your trade, what would Western people say to you, if you were the cause of it? Have you thought of that? Will the States of Michigan and New York, whose use of *our* bonding system is so extensively used in connection with the business of their railroads, be benefitted if we should retaliate? What, too, will the merchants of New York, Boston, Portland, and other Atlantic cities, say for losing the Canada trade? Our merchants now buy in bond, in these cities, foreign goods amounting to about $16,000,000 worth, and your merchants and the population of these cities, of course, have the advantage of it, and no small one either. Carry out your threat, and this important trade is at once transferred to the route of the St. Lawrence. Again, your merchants buy from us, and carry over our canals annually over $15,000,000 worth of lumber alone, which they largely re-ship, out of bond, to the West Indies, Brazil, and other Southern markets.. Do you want to stop that trade, and complete what the repeal of the Treaty has already begun? viz: The diversion of it to the St. Lawrence route? Before the repeal of the Treaty, in 1866, we did not ship a single cargo to South America; your merchants shipped our lumber to that market, and made the profit, while this year our own people, as the result of your high tariff policy, have shipped upwards of $3,000,000 worth of it. Obstructions to that trade, such as you yourself have indicated, would annihilate it, and it would be difficult for you to justify your policy to the lumber merchants of New York City, White Hall, Boston, Portland, and other important centres of your foreign lumber trade.

The same argument applies to the foreign fish trade, in which you re-ship largely, in bond, to Southern markets. Look at the statistics of Boston, the great fish market of your country, and see how your policy has undermined, and is gradually destroying that trade, and forcing our people to do it direct with the consumers in the South, in place of doing it through Boston merchants, and giving them the profit.

Again, you threaten—

*Non-intercourse!!!* Have you ever considered how it affects your existing Treaties, by which British subjects are *entitled* to admission into your ports on the terms of the most favored nations? Would you not be deliberately breaking

a national engagement, and without cause? But, what if Britain retaliated? Do you think the suffering would be all on our side? We rather think not!

*You will probably reflect on this matter before adopting an expedient so destructive of the true interests of your own people!*

The records of the past will tell you that if you resort to *non-intercourse*, it will not be the first time in the history of your country, and it is much to be regretted that past lessons have been thrown away upon you. Your message tells us that your "commerce is depressed." Instead of making it worse by trying to punish Canadians, suppose you try what common sense and sound principles of policy would dictate,—offer to meet us halfway,—say to us, we find it to be for the interest of our country, as it is that of yours, to have fewer restrictions upon trade, and a more free interchange of commodities,—we want the use of your Canals, and we will reciprocate,—we want the use of your St. Lawrence, though 'tis true, that we have no corresponding compensation to offer,—we want to participate in your fisheries, though we cannot offer you any fisheries in return that are worth anything to your people,—we will at least throw open our coasting trade and registry of shipping to the People of the Dominion, as fair compensation for our participation in their's, and we will enter into either a Reciprocity Treaty or an arrangement for trade and commerce, just and equitable to both nations. This would restore some of the prosperity which your country has lost—it would build up your commercial navy by giving you the advantage for your commerce of our cheap ships, at one half the expense which your own now cost you, and do much to enable you to regain your foreign trade, and especially that part of it emanating from Canada. Then it is a much easier and cheaper way of accomplishing what you profess to desire, viz:—to obtain all the natural advantages which we possess, and to promote the welfare of your country, than following the advice of reckless demagogues. If we are to judge by the utterances of those politicians who seem to have inspired your policy, you imagine that the restrictive and retaliatory policy will make us dissatisfied with our condition as British subjects, and advance the fulfillment of your "*Munroe doctrine.*" Let us say to you, if that at all influences you, or the party with whom you act in your treatment of us, that you and they make a fatal mistake. It has already had quite a contrary effect.

That there are some amongst us dissatisfied or dissapointed men, or some who may see in a change of system something to be desired, is quite probable—such you will also find in your own country, they are to be found in all lands and under all Governments; but this we say, without fear of contradiction, that

your restrictive policy and retaliative measures have had the effect of attaching our people more to our own country and institutions.

Whether your Munroe doctrine may hereafter prevail or not, is a matter for the future; but we do not believe it, and we certainly do not desire it! And if we are only,—as you say,—the "*semi-independent but irresponsible*" Government known "*as the Dominion of Canada,*" we are contented with our position, "*semi-independent*" though it be, and much prefer its continuance to taking the position which would probably be our fate, under the successful operation of your "Munroe doctrine." We will not pretend to deny but that our prosperity would be advanced, as we believe yours would also be, by a fair, liberal and just trade arrangement—either by Treaty or otherwise—and hence we desire that arrangement, and, to that extent, connection with you; but there is a reason applicable to your "*Munro doctrine,*" which should, in addition, influence you to secure some reciprocal trade arrangement, and it is this that the history of the past has taught us, that any of the disciples of that "*doctrine*" that we have amongst us were mainly influenced thereto by the trade advantages of the former Treaty—*business,* not *retaliation,* will best promote your views in that direction. For our part, we are satisfied with our political relations as they stand—we are connected with a country from whom we have, as you have yourselves inherited, free institutions, which we have—as you have—developed to suit the wants of our respective countries. We do not envy you yours, nor your great progress, nor your wealth, nor your increasing population,—we are glad to see you prosper, and if your President so far forgets what is due to his position as the first magistrate of a great nation, as to taunt us with our "*semi-independence,*" and what he is pleased to term our "*irresponsible*" character, we can only notice it with regret as being beneath the dignity of his position as the representative of a great and powerful people. This we may say to you, that we are to-day more populous than your country was when it declared its independence; we certainly are not less wealthy, we have a greater extent of territory, a much larger amount of tonnage, a greater extent of trade, revenue, and commerce, with institutions quite as free, and at least as acceptable to our population as your's; and with a population increasing in numbers quite as fast as even the great progressive increase of your own country—nay more, *we are contented,* feeling secure in our alliance with a parent State, which knows not only how to make concessions to her people when they are entitled to them, but also how to defend their rights. Then why should we desire the application of your "*Munroe doctrine?*"

President Grant avows his disposition to punish Canada, if, during next season, her laws affecting fishing by foreigners, shall be enforced against United

States citizens; and he asks Congress to empower him to suspend commercial intercourse with Canadians. Since, as we have shown, the alleged "unfriendly and vexatious treatment" of American fishermen consists of excluding them from the free use of our inshore and exclusive fisheries, and as Canada has no idea of abandoning the privileges which of right and justice belong to her, and the use and enjoyment of which are essential to the industry and prosperity of her own fishermen, although they will as formerly be enforced with the same moderation and forbearance which always characterise the enforcement of British rights, it may be presumed that President Grant will exercise the power which he moves Congress to confer on his executive. This being the future prospect, we may as well at once accept and prepare for the foregone conclusion. If our neighbours are determined, through the sanction of their popular representatives, that we shall not protect our own property, but allow a small class of their immense population, for their pecuniary gain, to trespass on our rights and privileges, and rob us of what belongs as wholly and clearly to ourselves, as the fish within three miles of the American coast belong to subjects of the United States, without incurring the hostility of President Grant, his cabinet and outside advisers —if it really is a necessity of their political system that rank outrage of laws and treaties and flagrant national injustice must be done to peaceful and friendly neighbours for mere *party purposes*—if the interests and aims of an election campaign necessarily super-add to this sacrifice of a great and powerful nation's honest dignity and self-respect, the further infliction of injury to the *trade and commerce of a much more numerous class*, and *far more extensive interests* than General Butler's constituents represent—then we earnestly hope that Congress will say so, by adopting the President's suggestion. We know precisely, and can tell them beforehand, just what it will produce among our people. They will deeply regret the persistent attitude of unfriendliness which Americans will have assumed and maintained towards them, simply because they are resolved to remain British subjects. They will sincerely deplore the unjust and illiberal treatment they have received from neighbours towards whom they have always acted with justice and liberality. They will feel that their rights are assailed, their conciliation contemned, and their business embarrased, not in reality because they have a desire to keep and use their inshore fisheries for themselves, but because the United States Government entertain "unfriendly" feelings towards the Empire, for want of sympathy in the late Civil War, and for unsettled claims to compensation and amends; and that American politicians are madly bent on *retaliating* such fancied wrongs, through the Imperial connection with Colonial affairs, and the national responsibility of Great Britain. We are not blind to the real object of President Grant's "unneighbourly" acts and utterances. The true aim is at Her Majesty's Government. This is where an effect is

desired to be produced. If he can only succeed in making mischief between Great Britain and Canada, and stirring up to prejudice and strife the ill-suppressed rancour with which certain of the American people regard England, and everything British, whether in Europe or America, the darling purpose of such a manifesto as this message, for the year of grace 1870, may be fulfilled. Last year the attack was on the ground of the Alabama claims from Britain—this year it is Canada and the fisheries. The Alabama grievances have been worn threadbare,—they have lost their force as a *party cry*—something fresh must be tried, hence the reference to possible difficulties that *we may create about the fisheries.* What a high and noble purpose for any statesman to avow as the mouthpiece of a Christian nation! We are assured it will fail of its intent, so far as Great Britain is concerned—we cannot believe it will succeed with the enlightened people of the United States. The course pursued by Canada towards her next door neighbour has been in complete accord with the views of the Imperial Government, and has been marked throughout these fishery difficulties by extreme liberality, patient conciliation, and a degree of moderation and forbearance, which has been acknowledged by the Empire as most exemplary. We have nothing to fear from President Grant's peculiar tactics. All we contend for is simple justice as British subjects. This Great Britain has not yet ceased to ensure to her loyal and devoted colonists. The President's unjust aspersions and menaces will knit us together in a firm determination to adhere to our rights in a becoming spirit,—a spirit of conscious right that can afford to be temperate and conciliatory, while just and determined. It will put many of our minor and local differences into abeyance. It will prepare us to make some sacrifices, and endure some interruptions to our trade. We shall redouble our efforts to complete our canal and railway system from the North-Western Territories to the Atlantic coast. These internal communications have been already too long delayed. We may thank President Grant for bringing sharply to the practical appreciation of Canadians the urgent necessity for their completion. In this respect his surly message will have rendered us an unexpected service. Above all, we shall become more than ever attached to our own country and to British Institutions. This policy, intended to discourage and embarrass us, will really create a strong public sentiment and national feeling in our midst, and serve to attach Canadians, if possible, more loyally than ever to those free and prosperous principles of *self-dependence, free commerce,* and *enlightened government,* which have made it impossible for the mother country to propose or perpetrate such absurdities as seem necessary at Washington in the interests of bigoted and vindictive politicians. We shall endeavour to make our young country independent of such caprices. Sincerely as we would wish to preserve amicable relations with our neighbours, and we do sincerely desire it, and to

renew those intimate trade relations which have proved mutually beneficial, and we are ready to do that,—greatly as we should regret the adoption of such extreme measures of mis-called retaliation as President Grant contemplates,—we will not be intimidated into any relinquishment of our just rights to avoid either temporary inconvenience or permanent loss, and we confidently rely upon the Government and Parliament of our country to reflect the independent spirit of our people in the presence of the unworthy menace contained in this Message.

OTTAWA,

12*th December*, 1870.

# APPENDIX A.

*Instructions from the British Government to the Governor of Newfoundland, relative to the Privilege enjoyed by Citizens of the United States to fish within British Jurisdiction. London, 17th June, 1815.*

DOWNING STREET, 17th June, 1815.

SIR,—As the Treaty of Peace lately concluded with the United States contains no provisions with respect to the fisheries which the subjects of the United States enjoyed under the third article of the Peace of 1783, His Majesty's Government consider it not unnecessary that you should be informed as to the extent to which those privileges are affected, by the omission of any stipulation in the present Treaty, and of the line of conduct which it is in consequence advisable for you to adopt.

You cannot but be aware that the third article of the Treaty of Peace of 1783, contained two distinct stipulations—the one recognizing the rights which the United States had to take fish upon the high seas, and the other granting to the United States the privilege of fishing within the British jurisdiction, and of using, under certain conditions, the shores and territory of His Majesty for purposes connected with the fishery: of these, the former, being considered permanent, cannot be altered or affected by any change of the relative situation of the two countries; but the other being a privilege derived from the Treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the Treaty itself. On the declaration of war by the American Government, and the consequent abrogation of the then existing Treaties, the United States forfeited, with respect to the fisheries, those privileges which are purely conventional; and, as they have not been renewed by stipulation in the present Treaty, the subjects of the United States can have no pretence to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fishery.

Such being the view taken of the question of the fisheries, as far as relates to the United States, I am commanded by His Royal Highness the Prince Regent to instruct you to abstain most carefully from any interference with the fishery, in which the subjects of the United States may be engaged, either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time, you will prevent them, except under the circumstances hereinafter mentioned, from using the British territory for purposes connected with the fishery, and will exclude their fishing vessels from the bays, harbors, rivers, creeks, and inlets, of all His Majesty's possessions. In case, however, it should have happened that the fishermen of the United States, through ignorance of the circumstances which affect this question, should, previous to your arrival, have already commenced a fishery similar to that carried on by them previous to the late war, and should have occupied the British harbors, and formed establishments on the British territory, which could not be suddenly abandoned without very considerable loss, His Royal Highness the Prince Regent, willing to give every indulgence to the citizens of the United

States, which is compatible with His Majesty's rights, has commanded me to instruct you to abstain from molesting such fishermen, or impeding the progress of their fishing during the present year, unless they should, by attempts to carry on a contraband trade, render themselves unworthy of protection or indulgence. You will, however, not fail to communicate to them the tenor of the instructions which you have received, and the view which His Maiesty's Government take of the question of the fishery; and you will, above all, be careful to explain to them that they are not, in any future season, to expect a continuance of the same indulgence.

I have, &c.,

BATHURST.

Vice-Admiral Sir Richard G. Keats.

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# APPENDIX B.

## IMPERIAL ACT 59, GEO. III., CAP. 38.

*An Act to enable His Majesty to make regulations with respect to taking and curing fish on certain parts of the coast of Newfoundland, Labrador, and His Majesty's other Possessions in North America, according to a Convention made between His Majesty and the United States of America.* (14*th June,* 1849.)

WHEREAS, a Convention between His Majesty and the United States of America, was made and signed at *London,* on the twentieth day of *October,* one thousand eight hundred and eighteen; and by the first article of the said Convention, reciting that differences had arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish, in certain coasts, bays, harbors and creeks of His *Britannic* Majesty's Dominions in *America,* it is agreed that the inhabitants of the said United States shall have for ever, in common with the subjects of His *Britannic* Majesty, the liberty to take fish of every kind on that part of southern coast of *Newfoundland,* which extends from *Cape Ray* to the *Rameau* Islands, on the western and northern coasts of *Newfoundland,* from the said *Cape Ray* to the *Quirpon* Islands, on the shores of the *Magdalen* Islands, and also on the coasts, bays, harbors and creeks from *Mount Joly,* on the southern coasts of *Labrador,* to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also, by the said article of the said Convention, agreed that the American fishermen should have liberty for ever to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador; but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground:—And whereas, it is expedient that His Majesty should be enabled to

carry into execution so much of the said Convention as is above recited, and to make regulations for that purpose;

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of his Majesty's Privy Council, by any Order or Orders in Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall, or may be, from time to time, deemed proper and necessary for the carrying into effect the purposes of the said Convention, with relation to the taking, drying and curing of fish by the inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said article of the said Convention, and hereinbefore recited; Any Act or Acts of Parliament, or any law, custom or usage to the contrary in anywise notwithstanding.

II. And be it further enacted, That, from and after the passing of this Act, it shall not be lawful for any person or persons, not being a natural born subject of His Majesty, in any foreign ship, vessel or boat, nor for any person in any ship, vessel or boat, other than shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks or harbors whatever, in any part of His Majesty's Dominions in America, not included within the limits specified and described in the first article of the said Convention, and hereinbefore recited; and that if any such foreign ship, vessel or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish, within such distance of such coasts, bays, creeks or harbors, within such parts of His Majesty's Dominions in America, out of the said limits, as aforesaid, all such ships, vessels and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like ways, means and methods, and in the same Courts as ships, vessels or boats may be forfeited, seized, prosecuted and condemned for any offence against any laws relating to the Revenue of Customs, or the laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain or of the United Kingdom of Great Britain and Ireland; Provided that nothing in this Act contained shall apply, or be constructed to apply, to the ships or subjects of any Prince, Power or State in amity with His Majesty, who are entitled by Treaty with His Majesty to any privilege of taking, drying or curing fish on the coasts, bays, creeks or harbors, or within the limits in this Act described.

III. Provided always, and be it enacted, That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbors of His Britannic Majesty's Dominions in America, as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying or curing fish in the said bays or harbors, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the

authority of this Act, and by any regulations which shall be issued by the Governor, or person exercising the office of Governor, in any such parts of His Majesty's Dominions in America, under or in pursuance of any such Order in Council as aforesaid.

IV. And be it further enacted, That if any person or persons, upon requisition made to the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor or person exercising the office of Governor, in any other parts of His Majesty's Dominions in America as aforesaid, or by any officer or officers acting under such Governor, or person exercising the office of Governor, in the execution of any orders or instructions from His Majesty in Council, shall refuse to depart from such bays or harbors, or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this Act, every such person so refusing or otherwise offending against this Act, shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the colony or settlement within or near to which such offence shall be committed, or by bill, plaint, or information in any of His Majesty's Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same; provided always that any such suit or prosecution, if the same be committed in Newfoundland, or in any other colony or settlement, shall be commenced within three calendar months; and, if commenced in any of His Majesty's Courts at Westminster, within twelve calendar months from the time of the commission of such offence.

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# APPENDIX C.

*Questions proposed by the House of Assembly of Nova Scotia, for consideration of Her Majesty's Legal Advisers; 8th June,* 1841:—

I. Whether the Treaty of 1783 was annulled by the war of 1812, and whether citizens of the United States possess any right of fishery in the waters of the lower Provinces other than ceded to them by the Convention of 1818; and if so, what right?

II. Have American citizens the right, under that Convention, to enter any of the bays of this Province to take fish, if, after they have so entered, they prosecute the fishery more than three marine miles from the shores of such bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?

III. Is the distance of three marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands: and what is to be considered a headland?

IV. Have American vessels, fitted out for a fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed limits, or to anchor there or to fish there? and is casting bait to lure fish in the track of the vessel fishing, within the meaning of the Convention?

V. Have American citizens a right to land on the Magdalen Islands, and conduct the fishery from the shores thereof, by using nets and seines; or what right of fishery do they possess on the shores of those islands: and what is meant by the term shore?

VI. Have American fishermen the right to enter the bays and harbours of this Province, for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages, in their own country; or have they only the right of entering such bays and harbours in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?

VII. Under existing treaties, what right of fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects?

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# APPENDIX D.

*Opinion of the Queen's Advocate General, and Her Majesty's Attorney General of England, upon a case submitted by the Assembly of Nova Scotia, as to the construction of the Convention of* 1818, *relative to the fisheries*:—

DOCTORS' COMMONS,
30th August, 1841.

MY LORD,—We are honored with Your Lordship's commands, signified in Mr. Backhouse's letter of the 26th March, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, enclosing the copy of a despatch, from the Lieutenant Governor of Nova Scotia, enclosing an Address to Her Majesty from the House of Assembly of that Province, complaining of the continued encroachments of American fishermen on the fishing grounds of Nova Scotia, and the adjoining Colonies, and praying that Her Majesty would establish, by an Order in Council, general regulations for the protection of the fisheries, according to the code annexed to the Address.

Mr. Backhouse is pleased to request that we would take these papers into consideration, and report to Your Lordship our opinion, whether there is anything in the proposed regulations which would be inconsistent with the stipulations of the Convention of the 20th October, 1818, between Great Britain and the United States of America.

We are also honored with Mr. Backhouse's letter of the 19th April, stating that he was directed to transmit to us a further letter from the Colonial Office, dated the 16th instant, enclosing the copy of a despatch from the Lieutenant Governor of Nova Scotia, covering a copy of an address from the Legislative Council of that Province, objecting to one of the above mentioned regulations proposed by the House of Assembly, in the Session of 1838, and to request that we would take these matters into consideration, in addition to those referred to in his letter of the 26th March last, and that we would report to Your Lordship, at our earliest convenience, our opinion thereon.

We are also honored with Mr. Backhouse's letter of the 8th June, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, together with the copy of a despatch from the Lieutenant Governor of Nova Scotia, enclosing a copy of a report of the House of Assembly, on the subject of the fisheries of that Province, and also enclosing a case for opinion, as to what rights have been ceded to the citizens of the United States of America, and as to what rights have been exclusively reserved to Her Majesty's subjects, and to request that we would take the papers into consideration, and report to Your Lordship our opinion on the several questions stated in the case above mentioned.

We are also honored with Mr. Backhouse's letter of the 5th ult., stating that he was directed to transmit to us a correspondence, as marked in the margin, which has passed between the Foreign Office and Mr. Stevenson, the American Minister at this Court, and the Colonial Department, on the subject of a remonstrance addressed by Mr. Stevenson, against the proceedings of the authorities in Nova Scotia, towards American fishing vessels, encroaching on the fisheries of that coast, and to request that we would take these papers into consideration, and to report to Your Lordship our opinion thereupon.

1st Query.—In obedience to Your Lordship's commands, we have taken these papers into consideration, and have the honor to report that we are of opinion that the Treaty of 1783 was annulled by the war of 1812; and we are also of opinion that the rights of fishery of the citizens of the United States, must now be considered as defined as regulated by the Convention of 1818; and with respect to the general question 'if so, what right?' we can only refer to terms of the Convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

2nd and 3rd Queries.—Except within certain defined limits, to which the query put to us does not apply, we are of opinion that by the terms of the Convention, American citizens are excluded from any right of fishing within three miles of the coast of British America; and that the prescribed distance of three miles is to be measured from the headlands, or extreme points of land next the sea, or the coast, or of the entrance of bays, or indents of the coast; and, consequently, that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing being within the bay may be at a greater distance than three miles from the shore of the bay; as we are of opinion that the term "headland" is used in the treaty to express the part of the land we have before mentioned, including the interiors of the bays, and the indents of the coast.

4th Query.—By the Convention of 1818, it is agreed that American citizens should have the liberty of fishing in the Gulf of Saint Lawrence, and within certain defined limits, in common with British subjects; and such Convention does not contain any words negativing the right to navigate the Passage or Strait of Canso, and therefore it may be conceded that such right of navigation is not taken away by that Convention; but we have now attentively considered the course of navigation to the Gulf by Cape Breton, and likewise the capacity and situation of the Passage of Canso, and of the British possessions on either side; and we are of opinion that, independently of treaty, no foreign country has the right to use or navigate the Passage of Canso; and, attending to the terms of the Convention relating to the liberty of fishing to be enjoyed by the American citizens, we are also of opinion that that Convention did not, either expressly or by necessary implication, concede any such right of using or navigating the passage in question. We are

also of opinion that casting bait, to lure fish in the track of any American vessel navigating the passage, would constitute a fishing within the negative terms of the Convention.

5th Query.—With reference to a claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed, that by the Convention, the liberty of drying and curing fish (purposes which could only be accomplished by landing), in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the coast of Labrador, is specifically provided for; but such liberty is distinctly negatived in any settled bays, &c., and it must therefore be inferred, that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore, over which such liberty was to be exercised, and whether in settled or unsettled parts but neither of these important particulars are provided for, even by implication; and that, among other considerations, leads us to the conclusion, that American citizens have no right to land, or conduct the fishery, from the shores of the Magdalen Islands. The word "shores" does not appear to have been used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would, therefore, comprise the land covered with water, as far as could be available for the due enjoyment of the liberty granted.

6th Query.—By the Convention, the liberty of entering the bays and harbors of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition expressed or implied, limiting the enjoyment to vessels duly provided with those articles at the commencement of their voyage; and we are of opinion that no such condition could be attached to the enjoyment of the liberty.

7th Query.—The rights of fishing ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing treaty on this subject between the two countries, and the material points arising thereon, have been specifically answered in our replies to the preceding queries.

We have, &c.,

(Signed,) J. Dodson,
Thos. Wilde.

Viscount Palmerston, K.B., &c., &c.

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# APPENDIX E.

## CIRCULAR RELATING TO CANADIAN IN-SHORE FISHERIES.

Treasury Department,
Washington, May 16, 1870.

Sir,—In compliance with the request of the Secretary of State, you are hereby authorised and directed to inform all masters of fishing vessels, at the time of clearance from your port, that the authorities of the Dominion of

Canada have terminated the system of granting fishing licences to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion—that is to say, within three marine miles of the shores thereof; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the Treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramean Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company; and have also liberty forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and also, are admitted to enter any other bays or harbors for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed.

The Canadian Law of the 22nd of May, 1868, 31 Victoria, Cap. 61, entitled "An Act respecting Fishing by Foreign Vessels," among other things, enacts that any commissioned officer of Her Majesty's Navy, serving on board of any vessel of Her Majesty's Navy, cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries; or any commissioned officer of Her Majesty's Navy, fishery officer, or stipendiary magistrate on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance. It also provides, that if such ship, vessel, or boat be bound elsewhere, and shall continue within such harbor, or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel, or boat into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage, and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above mentioned limits, without a licence, or after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the first section of this Act, such ship,

vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years. On the 8th of January, 1870, the Governor General of the Dominion of Canada, in Council, ordered that suitable sailing vessels, similar to *La Canadienne*, be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that by a change of the boundaries between Canada and Labrador, the Canadian territory now includes Mount Joly, and a portion of the shore to the east thereof, which in the Treaty of 1818 was described as the southern coast of Labrador.

This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,

Secretary.

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# APPENDIX F.

MEMORANDUM *of United States Fishing Vessels seized by Imperial and Canadian Cruisers during the season of* 1870, *for unlawful fishing, etc :—*

"*Wompatuck.*"—Seized 27th June, 1870, at Aspy Bay, Nova Scotia; actively fishing close in shore.

Captain of vessel admitted having caught fish within the prohibited limits during that day, and that he was aware he was fishing illegally.

"*J. H. Nickerson.*"—Seized 30th June, 1870, at Ingonish Island, Nova Scotia, actually fishing inside the Island, within a mile distant from shore. Had been previously warned three times, on the 25th, 26th, and 27th June, before fishing, with notice that vessel would be seized. Captain was personally informed that he had already violated the law by remaining in shore without cause, and was supplied with a copy of Mr. Boutwell's circular to American fishermen.

"*G. Marshall.*"—Seized 31st July, 1870, at Sandy Beach, inside Gaspé Bay, Quebec; actually fishing, and drawing seine ashore.

Previously boarded and warned.

"*Albert.*"—Seized 20th August, 1870, at Charlotte Town, Prince Edward Island; violation of Merchant Shipping Act. Owner, master and crew, by their plea, own to knowledge of offence.

"*Clara F. Friend.*"—Seized at Broad Cove, Cape Breton, Nova Scotia; actually fishing within three miles of shore. Previously warned.

Rescued by crew and re-captured,

NOTE.—*The three seizures last above named, were made by Her Majesty's cruisers.*

"*Lettie.*"—Seized 18th August, 1870, inside Gaspé Bay ; actually fishing, and having fished for seven days previously within prohibited limits. Had been boarded and warned.

"*Lizzie A. Tarr.*"—Seized 27th August, 1870, at Seven Islands, Quebec, about 100 miles inside of the mouth of the River St. Lawrence ; actively fishing one quarter of a mile from shore. Master was aware that the vessel was trespassing. Owner subsequently pleaded for release, on ground that he had specially directed said master not to go and fish at that place according to his expressed intention, because he would thereby expose said owner's property to seizure. Master and crew fishing on shares with owner.

"*A. H. Wonson.*"—Seized 3rd September, 1870, near Broad Cove, Sea Wolf Island, Cape Breton, Nova Scotia. Actively fishing between island and mainland, distant about one mile and a half from either shore. Previously boarded and warned.

"*A. J. Frankin,*"—Seized 15th October, 1870, at Broad Cove, Cape Breton, Nova Scotia, having fished within prohibited limits. Previously warned on the 7th of October. Captain strongly denied having fished, and although boarding officer felt satisfied that trespass had been committed, he desisted for the time being from seizing on such assurance. Afterwards, proof of actual and extensive fishing within the prohibited limits during 10th and 11th was obtained, and the seizure effected on the 15th October.

"*Granada.*"—Seized 25th October, 1870, at Port Hood, New Brunswick. Smuggling.

"*Romp.*"—Seized 8th November, 1870, at Back Bay, New Brunswick, having fished at Grand Manan Island, New Brunswick, within prohibited limits. Master acknowledged being aware of the illegality of such fishing.

"*White Fawn.*"—Seized 25th November, 1870, at Head Harbor, Campo Bello, New Brunswick ; preparing to fish.

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# APPENDIX G.

## CIRCULAR RELATING TO CANADIAN IN-SHORE FISHERIES.

TREASURY DEPARTMENT,
WASHINGTON, June 9, 1870.

SIR,—In compliance with the request of the Secretary of State, you are hereby authorized and directed to inform all masters of fishing vessels, at the time of clearance from your port, that the authorities of the Dominion of Canada have terminated the system of granting fishing licences to foreign vessels, under which they have heretofore been permitted to fish within the maritime jurisdiction of the said Dominion, that is to say, within three marine miles of the shores thereof ; and that all fishermen of the United States are prohibited from the use of such in-shore fisheries, except so far as stipulated in the first article of the Treaty of October 20, 1818, between the United States and Great Britain, in virtue of which the fishermen of the United States have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the

Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, which was, when the treaty was signed, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, indefinitely along the coast, without prejudice, however, to any exclusive rights of the Hudson's Bay Company; and have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks, of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador, unless the same, or any portion thereof, be settled, in which case it is not lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and also, are admitted to enter any other bays or harbors, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, *and for no other purpose whatever*, subject to such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed. Fishermen of the United States are bound to respect the British laws and regulations for the regulation and preservation of the fisheries to the same extent to which they are applicable to British or Canadian fishermen.

The Canadian law of the 22d of May, 1868, 31 Victoria, Cap. 61, intituled "An Act respecting fishing by foreign vessels," and the Act assented to on the 12th May, 1870, intituled "An Act to amend the Act respecting fishing by foreign vessels," among other things, enact, that any commissioned officer of Her Majesty's navy, serving on board of any vessel of Her Majesty's navy, cruising and being in the waters of Canada for the purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's navy, fishery officer, or stipendiary magistrate, on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat, within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, and stay on board so long as she may remain within such place or distance; and that any one of such officers or persons as are above mentioned may bring any ship, vessel, or boat, being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath, touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat, be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and has been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof, shall be forfeited. And that all goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo, liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act. And every person opposing any officer or person in the execution of his duty

under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

*It will be observed, that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning.*

On the 8th of January, 1870, the Governor General of the Dominion of Canada, in Council, ordered that suitable sailing vessels, similar to the "*La Canadienne*," be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners, these vessels to be connected with the police force of Canada, and to form a marine branch of the same. It is understood that, by a change of the boundaries between Canada and Labrador, the Canadian Territory now includes Mount Joly, and a portion of the shore to the east thereof, which, in the Treaty of 1818, was described as the southern coast of Labrador. This municipal change of boundary does not, however, interfere with the rights of American fishermen, as defined by the treaty, on that portion of what was the southern coast of Labrador, east of Mount Joly.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

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# APPENDIX H.

## EARL BATHURST TO MR. ADAMS.

FOREIGN OFFICE, 30th October, 1815.

The undersigned, one of His Majesty's principal Secretaries of State, had the honour of receiving the letter of the Minister of the United States, dated the 25th ultimo, containing the grounds upon which the United States conceive themselves, at the present time, entitled to prosecute their fisheries within the limits of the British Sovereignty, and to use British territories for purposes connected with the fisheries.

A pretension of this kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported.

His Majesty's Government have not failed to give to the argument contained in the letter of the 25th ultimo, a candid and deliberate consideration, and, although they are compelled to resist the claim of the United States, when thus brought forward as a question of right, they feel every disposition to afford to the citizens of those States all the liberties and privileges connected with the fisheries which can consist with the just rights and interests of Great Britain, and secure His Majesty's subjects from those undue molestations in their fisheries which they have formerly experienced from citizens of the United States. The Minister of the United States appears, by his letter, to be well aware that Great

Britain has always considered the liberty formerly enjoyed by the United States of fishing within British limits, and using British territory, as derived from the third article of the Treaty of 1783, and from that alone; and that the claim of an independent State to occupy and use at its discretion any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation. It is unnecessary to enquire into the motives which might have originally influenced Great Britain in conceding such liberties to the United States, or whether other articles of the Treaty, wherein these liberties are specified, did, or did not, in fact, afford an equivalent for them, because all the stipulations profess to be founded on reciprocal advantages and mutual convenience. If the United States derived from that Treaty privileges from which other independent nations, not admitted by Treaty, were excluded, the duration of the privileges must depend on the duration of the instrument by which they were granted; and if the war abrogated the Treaty, it determined the privileges.

It has been urged, indeed, on the part of the United States, that the Treaty of 1783 was of a peculiar character, and that, because it contained a recognition of American Independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule, that all Treaties are put an end to by a subsequent war between the same parties. She cannot, therefore, consent to give to her diplomatic relations with one State a different degree of permanency from that on which her connexion with all other States depends. Nor can she consider any one State at liberty to assign to a Treaty made with her such a peculiarity of character as shall make it, as to duration, an exception to all other Treaties, in order to found, on a pecularity thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions.

The Treaty of Ghent has been brought forward by the American Minister as supporting, by its reference to the boundary line of the United States, as fixed by the Treaty of 1783, the opinion that the Treaty of 1783 was not abrogated by the war. The undersigned, however, cannot observe in any one of its articles any express or implied reference to the Treaty of 1783, as still in force. It will not be denied that the main object of the Treaty of Ghent was the mutual restoration of all territory taken by either party from the other during the war.

As a necessary consequence of such a stipulation, each party reverted to their boundaries as before the war, without reference to the title by which these possessions were acquired, or to the mode in which their boundaries had been previously fixed. In point of fact, the United States had before acquired possession of territories asserted to depend on other titles than those which Great Britain could confer.

The Treaty of Ghent, indeed, adverted, as a fact of possession, to certain boundaries of the United States which were specified in the Treaty of 1783; but surely it will not be contended that therefore the Treaty of 1783 was not considered at an end.

It is justly stated by the American Minister that the United States did not need a new grant of the boundary line. The war did not arise out of a contested boundary; and Great Britain, therefore, by the act of treating with the United States, recognized that nation in its former dimensions, excepting so far as the *jus belli* had interfered with them, and it was the object of the Treaty of Ghent to cede such rights to territory as the *jus belli* had conferred. Still less does the free navigation of the Mississippi, as demanded by the British negotiators at Ghent, in any manner express or imply the non-abrogation of the Treaty of

1783 by the subsequent war. It was brought forward by them as one of many advantages which they were desirous of securing to Great Britain; and if, in the first instance, demanded without equivalent, it left it open to the negotiators of the United States to claim for their Government, in the course of their conferences, a corresponding benefit. The American Minister will recollect that propositions of this nature were at one time under discussion, and that they were only abandoned at the time that Great Britain relinquished her demand to the navigation of the Mississippi. If, then, the demand on the part of Great Britain can be supposed to have given any weight to the present argument of the United States, the abandonment of that demand must have effectually removed it.

It is by no means unusual for Treaties containing recognitions and acknowledgements of title, in the nature of perpetual obligation, to contain, likewise, grants of privileges liable to revocation. The Treaty of 1783, like many others, contained provisions of different characters, some in their own nature irrevocable, and others of a temporary nature. If it be thence inferred that, because some advantages specified in that Treaty would not be put an end to by the war, therefore all the other advantages were intended to be equally permanent, it must first be shown that the advantages themselves are of the same, or, at least, of a similar character; for the character of one advantage recognized or conceded by Treaty can have no connection with the character of another, though conceded by the same instrument, unless it arises out of a strict and necessary connection between the advantages themselves. But what necessary connection can there be between a right to independence and a liberty to fish within British jurisdiction, or to use British territory? Liberties within British limits are as capable of being exercised by a dependent, as by an independent State, and cannot, therefore, be the necessary consequence of independence.

The independence of a State is that which cannot be correctly said to be granted by Treaty, but to be acknowledged by one. In the Treaty of 1783, the independence of the United States was certainly acknowledged, not merely by the consent to make the Treaty, but by the previous consent to enter into the provisional articles executed in November, 1782. The independence might have been acknowledged, without even the Treaty or the provisional articles; but, by whatever mode acknowledged, the acknowledgment is, in its own nature, irrevocable. A power of revoking, or even of modifying it, would be destructive of the thing itself, and, therefore, all such power is necessarily renounced when the acknowledgment is made. The war could not put an end to it, for the reason justly assigned by the American Minister, because a nation could not forfeit its sovereignty by the act of exercising it, and for the further reason, that Great Britain, when she declared war on her part against the United States, gave them, by that very act, a new recognition of their independence.

The nature of the liberty to fish within British limits, or to use British territory, is essentially different from the right to independence, in all that may reasonably be supposed to regard its intended duration. The grant of this liberty has all the aspect of a policy temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences, in a military, naval, or commercial point of view, resulting from the access of an independent nation to such islands and places. When, therefore, Great Britain, admitting the independence of the United States, denies their right to the liberties for which they now contend, it is not that she selects from the Treaty, articles, or parts of articles, and says, at her own will, this stipulation is liable to forfeiture by war, and that it is irrevocable; but the principle of her reasoning

is, that such distinctions arise out of the provisions themselves, and are founded on the very nature of the grants. But the rights acknowledged by the Treaty of 1783 are not only distinguishable from the liberties conceded by the same Treaty, in the foundation upon which they stand, but they are carefully distinguished in the Treaty of 1783 itself. The undersigned begs to call the attention of the American Minister to the wording of the first and third articles, to which he has often referred for the foundation of his arguments. In the first article, Great Britain acknowledges an independence already expressly recognized by the Powers of Europe and by herself, in her consent to enter into provisional articles, of November, 1782. In the third article, Great Britain acknowledges the right of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation; but they are to have the liberty to cure and dry them in certain unsettled places within His Majesty's territory. If these liberties, thus granted, were to be as perpetual and indefeasible as the rights previously recognized, it is difficult to conceive that the plenipotentiaries of the United States would have admitted a variation of language so adapted to produce a different impression, and, above all, that they should have admitted so strange a restriction of a perpetual and indefeasible right as that with which the article concludes, which leaves a right so practical and so beneficial as this is admitted to be, dependent on the will of British subjects, in their character of inhabitants, proprietors, or possessors of the soil—to prohibit its exercise altogether.

It is surely obvious that the word *right, is,* throughout the Treaty, used as applicable to what the United States were to enjoy in virtue of a recognized independence, and the word *liberty* to what they were to enjoy as concessions strictly dependent on the Treaty itself. The right of the United States has been asserted upon other arguments, which appear to the undersigned not altogether consistent with those that had been previously advanced. It has been argued by the Minister of the United States that the Treaty of 1783 did not confer upon the United States the liberty of fishing within British jurisdiction, and using British territory, but merely recognized a right which they previously had; and it has been thence inferred that the recognition of this right renders it as perpetual as that of their independence.

If the Treaty of 1783 did not confer the liberties in question, the undersigned cannot understand why, in their support, the point should have been so much pressed, that the Treaty is in force notwithstanding the subsequent war. If, as stated by the American Minister, the time of the settlement of North America was the origin of the liberties of the United States in respect to the fisheries, and their independence, as recognised in 1783, was, as furthur argued by him, the mere recognition of rights and liberties previously existing, (which must have been in virtue of their independence,) it would seem to follow that their independence was recognised from the time of the settlement of North America, for no other period can be assigned. The undersigned is totally unable to collect when the American Minister considers the independence of his country to have commenced, yet this is a point of no small importance, if other rights are to be represented as coeval with it, or dependent on it.

As to the origin of these privileges, in point of fact, the undersigned is ready to admit that, so long as the United States constituted a part of the Dominions of His Majesty, the inhabitants had the enjoyment of them, as they had of other political and commercial advantages, in common with His Majesty's subjects. But they had, at the same time, in common with His Majesty's other subjects, duties to perform, and when the United States, by their separation

from Great Britain, became released from the duties, they became excluded, also, from the advantages of British subjects; they cannot, therefore, now claim, otherwise than by Treaty, the exercise of privileges belonging to them as British subjects, unless they are prepared to admit, on the part of Great Britain, the exercise of the rights which she enjoyed previous to the separation.

If it be contended, on the part of the United States, that, in consequence of having been once a part of the British dominions, they are now entitled, as of right, to all the privileges which they enjoyed as British subjects, in addition to those which they have as an independent people, the undersigned cannot too strongly protest against such a doctrine; and it must become doubly necessary for Great Britain to hesitate in conceding the privileges which are now the subject of discussion, lest, by such a concession, she should be suppos d to countenance a principle not less novel than alarming. But, though GreateBritain can never admit the claim of the United States to enjoy those liberties, with respect to the fisheries, as matter of right, she is by no means insensible to some of those considerations with which the letter of the American Minister concludes.

Although His Majesty's Government cannot admit that the claim of the American fishermen to fish within British jurisdiction, and to use the British territory for purposes connected with their fishery, is analogous to the indulgence which has been granted to enemies' subjects engaged in fishing on the high eas, for the purpose of conveying fresh fish to market; yet they do feel that the enjoyment of the liberties formerly used by the inhabitants of the United States may be very conducive to their national and individual prosperity, though they should be placed under some modifications; and this feeling operates most forcibly in favor of concession. But Great Britain can only offer the concession in a way which shall effectually protect her own subjects from such obstructions to their lawful enterprises as they too frequently experienced immediately previous to the late war, and which are, from their very nature, calculated to produce collision and dissension between the two States.

It was not of fair competition that His Majesty's Government had reason to complain, but of the pre-occupation of British harbors and creeks, in North America, by the fishing vessels of the United States, and the forcible exclusion of British vessels from places where the fishery might be most advantageously conducted. They had, likewise, reason to complain of the clandestine introduction of prohibited goods into the British Colonies by American vessels, ostensibly engaged in the fishing trade, to the great injury of the British revenue.

The undersigned has felt it incumbent on him thus generally to notice these obstructions, in the hope that the attention of the Government of the United States will be directed to the subject; and that they may be induced amicably and cordially to co-operate with His Majesty's Government in devising such regulations as shall prevent the recurrence of similar inconveniences.

His Majesty's Government are willing to enter into negotiations with the Government of the United States for the modified renewal of the liberties in question, and they doubt not that an arrangement may be made, satisfactory to both countries, and tending to confirm the amity now so happily subsisting between them.

The undersigned avails himself of this opportunity of renewing to Mr. Adams the assurances of his high consideration.

(Signed,) BATHURST.

# THE QUEEN,

APPELLANT:

AND

# CHRISTIAN A. ROBERTSON,

RESPONDENT.

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## ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

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PETITION OF RIGHT—FISHERIES ACT, 31 VIC., CH. 60 (D)—BRITISH NORTH AMERICA ACT, 1867, SECS. 91, 92 AND 109—FISHERIES, REGULATION AND PROTECTION OF—LICENSE TO FISH IN THAT PART OF THE MIRAMICHI RIVER ABOVE PRICE'S BEND—RIGHTS OF RIPARIAN PROPRIETORS IN GRANTED AND UNGRANTED LANDS—RIGHT OF PASSAGE AND RIGHT OF FISHING.

OTTAWA:

PRINTED BY MACLEAN, ROGER & CO, WELLINGTON STREET.

1882.

THE QUEEN..... .....APPELLANT; 1882

AND

CHRISTIAN A. ROBERTSON.....RESPONDENT.

*Feb'y. 21.
*April 28.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Petition of Right—Fisheries Act,* 31 *Vic. ch.* 60 (*D*)—*British North America Act,* 1867, *secs.* 91, 92 and 109—*Fisheries, regulation and protection of—License to fish in that part of the Miramichi River above Price's Bend—Rights of riparian proprietors in granted and ungranted lands—Right of passage and right of fishing.*

On January 1st, 1874, the Minister of Marine and Fisheries of *Canada*, purporting to act under the powers conferred on him by sec. 2, ch. 60, 31 *Vic.*, executed on behalf of Her Majesty to the suppliant an instrument called a lease of fishery, whereby Her Majesty purported to lease to the suppliant for nine years a certain portion of the *South West Miramichi* River in *New Brunswick* for the purpose of fly-fishing for salmon therein. The *locus in quo* being thus described in the special case agreed to by the parties :—

"*Price's Bend* is about 40 or 45 miles above the ebb and flow of the tide. The stream for the greater part from this point upward, is navigable for canoes, small boats, flat-bottomed scows, logs and timber. Logs are usually driven down the river in high water in the spring and fall. The stream is rapid. During summer it is in some places on the bars very shallow."

Certain persons who had received conveyances of a portion of the river and who, under such conveyances, claimed the exclusive right of fishing in such portion, interrupted the suppliant in the enjoyment of his fishing under the lease granted to him, and put him to certain expenses in endeavoring to assert and defend his claim to the ownership of the fishing of that portion of the river included in his lease. The Supreme Court of *New Brunswick* having decided adversely to his exclusive right to fish in virtue

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* PRESENT.—Sir W. J. Ritchie, Knight, C. J.; and Strong, Fournier, Henry and Taschereau, J. J.

1882

THE QUEEN
*v.*
ROBERTSON.

of said lease, the suppliant presented a petition of right and claimed compensation from Her Majesty for the loss of his fishing privileges and for the expenses he had incurred.

By special case certain questions (which are given below) were submitted for the decision of the court, and the Exchequer Court held *inter alia* that an exclusive right of fishing existed in the parties who had received the conveyances, and that the Minister of Marine and Fisheries consequently had no power to grant a lease or license under sec. 2 of the Fisheries Act of the portion of the river in question, and in answer to the 8th question, viz.: "where the lands (above tidal water) through which the said river passes are ungranted by the Crown, could the Minister of Marine and Fisheries lawfully issue a lease of that portion of the river?" held, that the Minister could not lawfully issue a lease of the bed of the river, but that he could lawfully issue a license to fish as a franchise apart from the ownership of the soil in that portion of the river.

The appellant thereupon appealed to the Supreme Court of *Canada* on the main question; whether or not an exclusive right of fishing did so exist.

*Held*,—(affirming the judgment of the Exchequer Court) 1st, that the general power of regulating and protecting the Fisheries, under the *British North America Act*, 1867, sec. 91, is in the Parliament of *Canada*, but that the license granted by the Minister of Marine and Fisheries of the *locus in quo* was void because said act only authorizes the granting of leases "where the exclusive right of fishing does not already exist by law," and in this case the exclusive right of fishing belonged to the owners of the land through which that portion of the *Miramichi* River flows.

2nd. That altho' the public may have in a river, such as the one in question, an easement or right to float rafts or logs down and a right of passage up and down in *Canada*, &c., wherever the water is sufficiently high to be so used, such right is not inconsistent with an exclusive right of fishing or with the right of the owners of property opposite their respective lands *ad medium filum aquæ*.

3rd. That the rights of fishing in a river, such as is that part of the *Miramichi* from *Price's Bend* to its source, are an incident to the grant of the land through which such river flows, and where such grants have been made there is no authority given by the *B. N. A. Act*, 1867, to grant a right to fish, and the Dominion Parliament has no right to give such authority.

4th. Per *Ritchie*, C. J., and *Strong*, *Fournier* and *Henry*, J. J.—(reversing the judgment of the Exchequer Court on the 8th

question submitted) that the ungranted lands in the Province of *New Brunswick* being in the Crown for the benefit of the people of *New Brunswick*, the exclusive right to fish follows as an incident, and is in the Crown as trustee for the benefit of the people of the province, and therefore a license by the Minister of Marine and Fisheries to fish in streams running through provincial property would be illegal.

APPEAL from a judgment rendered by Mr. Justice *Gwynne* in the Exchequer Court of *Canada*, in the matter of the petition of right of *Christian A. Robertson*, the above-named respondent.

The following special case was agreed to by the parties:

"The *Miramichi* river at *Price's Bend* is about forty or forty-five miles above the ebb and flow of the tide. The stream for the greater part from this point, upward, is navigable for canoes, small boats, flat bottom scows, logs and timber. Logs are usually driven down the river in high water in the spring and fall. The stream is rapid. During summer it is in some places on the bars very shallow. In the salmon fishing season, say June, July and August, canoes have to be hauled over the very shallow bars by hand.

"On the 5th November, A.D. 1835, a grant issued to the *Nova Scotia* and *New Brunswick Land Company* of 580,000 acres, which included within its limits that portion of the *Miramichi* river which is in question, and the said grant contained, together with the usual granting clauses, the following clause:—'Excepting also out of the said tract of land, described within the said bounds, all and every lot, piece and parcel of land which have been heretofore by us or our predecessors given or granted to any person or persons whatsoever, or to any body corporate by any grant or conveyance under the Great Seal of the province of *New Brunswick*, or the Great Seal of the province of *Nova Scotia* during the period when the said hereby granted tract of land was part and parcel of our said province of *Nova Scotia*,

1882

THE QUEEN v. ROBERTSON.

together with all privileges, &c., and also further excepting the bed and waters of the *Miramichi* river, and the beds and waters of all the rivers and streams which empty themselves either into the river *St. John* or the river *Nashwaak*, so far up the said rivers or streams respectively as the same respectively pass through, or over any of the said heretofore previously granted tracts, pieces or parcels of land hereinbefore excepted.' (Copy of grant may be referred to.)

"Copies of grants, made prior to the grant to the *Nova Scotia* and *New Brunswick Land Company*, of same lots within and some immediately adjoining and outside of the boundaries of the company's tract, to *Steven Hovey*, *Peter Hayes*, *Thomas Hunter* and *James Young*, and twelve other copies of letters patent are herewith and may be referred to. The other grants to the others within the company's tract are in similar form; copy of map annexed to the grant to the company is also filed herewith, and all are made part of this case.

"On the first day of January, A.D. 1871, the Honorable *Peter Mitchell*, then being the Minister of Marine and Fisheries in and for the Dominion of *Canada*, did, in pursuance of the powers purporting to be vested in him by the Act of the parliament of *Canada*, intituled "An Act for the regulation of fishing and protection of the fisheries," lease to suppliant as follows :—

LEASE OF FISHERY.

"Dominion of *Canada*, to wit :

"Lease between Her Majesty, acting by and through the Minister of Marine and Fisheries for the Dominion of *Canada*, of the one part, and *Christian A. Robertson*, esquire, of the city of *St. John*, *New Brunswick*, of the other part.

1882

THE QUEEN v. ROBERTSON.

"Her Majesty hereby leases, for the purpose of fly fishing for salmon, unto the said *Christian A. Robertson*, hereto present and accepting for himself, his heirs executors, administrators and assigns, for and during the period hereinafter mentioned, and under the conditions hereinbelow stipulated, a certain fishing station situated on the South-west *Miramichi* river, in the province of *New Brunswick*, and described as follows, that is to say: the fluvial or angling division of the South-west *Miramichi* river from *Price's Bend* to its source.

"The present lease is hereby made for and during the space and term of nine years, to be computed and reckoned from the first day of January, one thousand eight hundred and seventy four until the thirty-first day of December, which will be in the year of our Lord one thousand eight hundred and eighty-two, and on the following conditions:—

"1st. That the said lessee shall pay to Her Majesty, into the hands of the Minister of Marine and Fisheries for the time being, or such other person or persons duly authorized to receive the same, an annual rent of fifty dollars currency, the said rent payable yearly in advance.

"2nd. That the said lessee shall, in the use and occupation of the fishery station and privileges hereby leased, and the working of the same, in every respect conform to all and every the provisions, enactments and requirements of the fishery laws now, or which may hereafter be in force, and comply with all rules and regulations adopted or to be passed by the Governor General in Council relative thereto.

"3rd. That the lessee shall neither concede nor transfer any interest in the present grant, nor sub-let to any one without first duly notifying the Department of Marine and Fisheries, and receiving the written consent of the Minister thereof, or some other person or persons

1882

THE QUEEN v. ROBERTSON.

authorized to that effect. Provided always that actual settlers shall enjoy the privilege of fishing with a rod and line in the manner known as fly surface-fishing in front of their own properties.

"4th. That the said lessee shall not have any right, claim or pretension to any indemnity or abatement of rent by reason of a decrease or failure in the fishery by these presents leased.

'5th. That in default of payment by the said lessee of the rent as hereinbefore stipulated, or by his neglect, default or evasion, failure or refusal to fulfil any of the other clauses and conditions of this lease, the same may, at the option of the lessor, be at any time determined and put an end to upon notice thereof to the said lessee by letter posted to him to the post office nearest to the said premises, or by personal notice through any overseer of fisheries for the province of *New Brunswick*, or other person by the Minister of Marine and Fisheries deputed for the purpose, and the said lease shall become absolutely void and the crown may thereupon enter into possession and enjoyment of the said station and privileges without any indemnification for improvements or recourse to law, and relet the same ; the said lessee being moreover held bound and liable for all loss or damage which might accrue or arise to the crown by reason of receiving a lower rent, or being unable to release the premises and privileges appertaining thereto or otherwise.

"6th. That the said lessee binds himself to establish and maintain efficient private guardianship upon the said stream throughout each season, to the satisfaction of the lessor, who reserves the right of four rods.

"This said lease (in duplicate) made and passed on the thirty-first day of October, in the year of our Lord

one thousand eight hundred and seventy-three in presence of the undersigned witnesses.

P. MITCHELL,
Minister of Marine and Fisheries.

Witness: *S P. Bauset.*

Countersigned—*W. F. Whitcher,*
Commissioner of Fisheries.
*C. A. Robertson.*

Witness: *W. H. Venning.*

"It is admitted for the purpose of this case:

"1. That the Government of *Canada* did not own the lands adjoining the said river within the limits of the said lease.

"2. That the said lease includes all that portion of the South-west *Miramichi* River included in the lands of the aforesaid grant to the *Nova Scotia and New Brunswick Land Company;* and also the remainder of the river above the said grant up to its source, which last portion of the river passes through ungranted land, and is of comparatively little value for the purpose of salmon fishing. That the said river for several miles up the stream and above and below the lots and parcels of land previously granted to the said *New Brunswick and Nova Scotia Land Company*, and excepted in the said grant, is within the boundaries of the land described in the said grant. That under the said lease the suppliant entered upon the said fluvial division so leased to him, and paid the annual rent, and fulfilled and performed all the conditions and agreements and provisions in the said lease contained on his part and behalf to be kept fulfilled and performed.

"3. That although the suppliant under the said lease claimed to be in occupation of the said fishery station described in aforesaid lease, and to have the exclusive right of fishing therein, and that subject to the reservations in the said lease he had the right of preventing all

1882

THE QUEEN v. ROBERTSON.

persons from fishing for salmon within the bounds of the said fishery station, *James Steadman* and *Edgar Hanson*, who were not actual settlers, and who did not have or claim to have any lease, license or permission so to do from the Minister of Marine and Fisheries, or from the suppliant, did (with the permission and consent of and under and by virtue of conveyances from the said *Nova Scotia and New Brunswick Land Company* of land, including a portion of the said river above the aforesaid grants so excepted and reserved in said grant to the Company), during the year 1875, and during the season when fly-fishing was lawful, enter upon the said portion of the river, being a part of the river so leased as aforesaid, and fished for and caught salmon by fly fishing against the will of suppliant and against his consent.

"4. That in order to maintain his rights and privileges, and the right of fishing purporting to be granted and demised to the suppliant by the said lease, the suppliant prevented the said *James Steadman* and *Edgar Hanson* from fly fishing.

"5. That the said *James Steadman* and *Edgar Hanson* respectively, brought actions against the suppliant and his servants for and by reason of such prevention from fishing, as above stated, and such proceedings were thereupon had that the said *James Steadman* and *Edgar Hanson* recovered against the suppliant damages and costs, which the suppliant has been obliged to pay, and that the Supreme Court of *New Brunswick* on appeal (see *Steadman* v. *Robertson et al.*, and *Hanson* v. *Robertson et al.* (1), held that the Minister of Marine and Fisheries had no right or power to issue the said fishery lease, and that the same was null and void.

"6. That in and about the defence of the said actions the suppliant also incurred costs and expenses.

(1) 2 Pugs. & Bur. 573.

1882

THE QUEEN v. ROBERTSON.

"7. That also by reason of the premises the suppliant has sustained other loss and damage.

"8. That in establishing and maintaining efficient private guardianship upon the said stream through the season, required by the said lease, the suppliant has also expended money.

"9. That the suppliant therefore prays that her Majesty will be pleased to do what is right and just in the premises, and cause the suppliant to be re-imbursed and compensated for the moneys so expended by him as aforesaid, and for the losses, damages and injuries sustained by him as aforesaid.

"10. It is agreed that the statements above set out are admitted for the purpose of this special case, and are to be used for the purpose of enabling the court to decide the questions of law raised hereby.

"11. It is also agreed that either party may appeal from the judgment to be pronounced in the above case as upon a demurrer.

"The following questions are therefore submitted for the decision of the court:

"1. Had the Parliament of *Canada* power to pass the 2nd section of the said Act entitled "An Act for the regulation of fishing and the protection of the Fisheries?"

"2. Had the Minister of Marine and Fisheries the right to issue the fishery lease in question?

"3. Was the bed of the *S. W. Miramichi* within the limits of grant to the *Nova Scotia* and *New Brunswick* Land Company, and above the grants mentioned and reserved therein, granted to the said company?

"4. If so, did the exclusive right of fishing in said river thereby pass to the said company?

"5. If the bed of the river did not pass, had the company, as riparian proprietor, the right of fishing *ad filum aquæ*; and if so, was that right exclusive?

1882

THE QUEEN v. ROBERTSON.

"6. Have the grantees in grants of lots bounded by said river, or by any part thereof, and excepted from the said company's grant, any exclusive or other right of fishing in said river opposite their respective grants?

"7. If an exclusive right of fishing in a portion of the *Miramichi* river passed to said company, or to the grantees in the excepted grants, or any of them, could the Minister of Marine and Fisheries issue a valid fishery lease of such portion of the river?

"8. Where the lands (above tidal water) through which the said river passes are ungranted by the Crown, could the Minister of Marine and Fisheries lawfully issue a lease of that portion of the river?

"9. It is understood and agreed, that if upon the final determination of the case it be held that the Government had no power to make the lease in question to Mr. *Robertson*, an order shall be made referring it to the proper officer of the court to take an account of the expenses actually and properly incurred by Mr. *Robertson*, in connection with the suits in the courts of *New Brunswick*, and such other actual expenses as he may have been put to on account of the action of the parties who intercepted the rights claimed by him under the lease; and it is further understood and agreed that the government shall pay to Mr. *Robertson* such of these expenses as the court may think him entitled to, in case the parties to this suit may differ upon the matter."

The case was argued in the Exchequer Court for the Suppliant by Mr. *Haliburton*, Q. C., and for the Crown by Mr. *Lash*, Q. C.

On the 7th October, 1880, the following judgment was delivered by GWYNNE, J.:—

"This special case came before me in the month of February, but upon the argument appearing to be imperfect was withdrawn, and amended, and as so

1882

THE QUEEN v. ROBERTSON.

amended was argued in the month of May. After this argument there appeared to me to be still wanting information as to some facts which should be introduced by way of further amendment. These facts have been supplied during the vacation and are now made part of the case.

"The question is as to the right to the Salmon Fishery in the *Miramichi* River in the Province of *New Brunswick*, and as to the validity of an instrument purporting to be a lease or license under the provisions of the Fisheries Act of 1868, issued by the Minister of Marine and Fisheries, bearing date 31st October, 1873. The questions submitted by the special case which has been agreed upon are as follows:

"1. Had the Parliament of Canada power to pass the 2nd section of the Act of 1868 entitled: 'An Act for the regulation of Fishing and the Protection of the Fisheries'?

"2. Had the Minister of Marine and Fisheries the right to issue the Fishery Lease in question?

"3. Was the bed of S. W. *Miramichi* River within the limits of the grant to the *Nova Scotia* and *New Brunswick* Land Company, and above the grants mentioned and reserved therein, granted to the said Company?

"4. If so, did the exclusive right of fishing in said River thereby pass to the said Company?

"5. If the bed of the River did not pass, had the Company as riparian proprietor the right of fishing *ad filum aquæ*, and if so, was that right exclusive?

"6. Have the Grantees in grants of lots bounded by said River or by any part thereof, and excepted from the said Company's grant, any exclusive, or other right of fishing in said River opposite to their respective grants?

"7. If an exclusive right of fishing in a portion of

1882

THE QUEEN v. ROBERTSON.

the *Miramichi* River passed to the said Company or to the grantees in the excepted grants or any of them, could the Minister of Marine and Fisheries issue a valid fishery lease of such portion of the river?

"8. Where the lands, above tidal water, through which the said River passes are ungranted by the Crown, could the Minister of Marine and Fisheries lawfully issue a Lease of that a portion of the River?

"It is agreed by the case, that if, upon the final determination of it, it be held that the Government had no power to make the lease in question to the Suppliant, an order shall be made referring it to the proper officer of the Court to take an account of the expenses actually and properly incurred in connection with certain suits in the Courts in *New Brunswick* and such other actual expenses as he may have been put to on account of the action of parties who intercepted the rights claimed by him under the lease, and it was further agreed that the Government should pay to the Suppliant such of those expenses as the Court may think him entitled to, in case the Suppliant and the Government should differ upon the matter.

"The clause of the Act referred to in the first of the above questions is the second section of the Dominion Act 31st *Vic.*, c. 60, and is as follows:—'The Minister of Marine and Fisheries may, where the exclusive right of fishing does not already exist by law, issue or authorize to be issued Fishery Leases, and licenses for Fisheries and fishing, wherever situate and carried on, but leases or licenses for any term exceeding nine years, shall be issued only under authority of an order of the Governor in Council.'

"The Act in which this section is contained was passed by the Dominion Parliament 'for the regulation of fishing and the protection of Fisheries' and it was passed under the authority of the *British North America*

Act, the 91st section of which places, among other matters, under the exclusive authority of the Parliament of *Canada*, 'Sea Coast and Inland Fisheries.'

"To secure an uniformly consistent construction of this our Constitutional Charter it is necessary that some certain and sufficient canon of construction should be laid down and adopted, by which all Acts passed as well by the Parliament as by the Local Legislatures may be effectually tested upon a question arising as to their being or not being *intra vires* of the legislating body passing them. Such a canon appeared to me to be that formulated by me in the *City of Fredericton* v. *The Queen* (1), and it still appears to me to be a good and sufficient rule for the required purpose, namely,— 'All subjects of legislation of every description whatever are within the jurisdiction and control of the Dominion Parliament to legislate upon, except such as are placed by the *British North America* Act under the exclusive control of the Local Legislatures, and nothing is placed under the exclusive control of the Local Legislatures unless it comes within some or one of the subjects specially enumerated in the 92nd section, and is at the same time outside of the several items enumerated in the 91st section, that is to say, does not involve any interference with any of those items.' The effect of the closing paragraph of the 91st section, namely: 'and any matter coming within any of the classes of subjects enumerated in the 91st section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces' in my opinion clearly is to exclude from the jurisdiction of the Local Legislatures the several subjects enumerated in the 92nd section, in so far as they relate to or affect any of the matters enumerated in the 91st section.

(1) 3 Can. S. C. R. 505.

1882

THE QUEEN v. ROBERTSON.

"Now, among the items enumerated in section 92 there is nothing which could give to the Local Legislature any jurisdiction whatever over Sea Coast and Inland Fisheries, unless it be the item 'Property and Civil Rights in the Province,' but inasmuch as 'Sea Coasts and Inland Fisheries' are enumerated specially in the 91st section as placed under the exclusive control of Parliament, this enumeration carries with it exclusive jurisdiction over property and civil rights in every province in so far as whatever is comprehended under the term 'Sea Coast and Inland Fisheries' is concerned, and the Local Legislatures have no jurisdiction whatever over this subject; the jurisdiction therefore which is given to the Local Legislatures over 'property and civil rights in the Province' is not an absolute, but only a qualified jurisdiction, and must be held to be limited to the residuum of such jurisdiction not absorbed by the exclusive control given to the Dominion Parliament over every one of the subjects enumerated in the 91st section: while the jurisdiction of Parliament over every subject placed under *its* control is as absolute and supreme as the jurisdiction of the Imperial Parliament over the like subject in the United Kingdom would be; the design of the *British North America* Act being to give to the Dominion of *Canada* a constitution similar in principle to that of the United Kingdom. It is, of course, in every case, necessary to form an accurate judgment upon what is the particular subject matter in each case as to which the question arises, for the extent of the control of parliament over the subject-matter, may possibly be limited by the nature of the subject; for instance, the first item enumerated in the 91st section as placed under the exclusive control of the Parliament is 'the Public debt and property,' and by section 108 the Provincial Public Works and property are declared to be the property of *Canada*.

1882

THE QUEEN v. ROBERTSON.

The jurisdiction of Parliament over such property is in virtue of the subject-matter being the property of *Canada*, but if Parliament should so legislate as to dispose absolutely by sale of portions of this property from time to time, it may well be that the property so sold, when it should become the property of individuals, should be no longer subject to the control of the Dominion Parliament any more than any other property of an individual should be; but over most of the subjects enumerated in the 91st section, the right of the Dominion Parliament to legislate is wholly irrespective of there being any property in the several subjects *vested* in the Dominion of *Canada*, and over those subjects the right of legislation continues forever, no matter who may have 'property or civil rights' therein. There is nothing strange in this provision; on the contrary, it is in perfect character with the whole scheme of the Act, that the jurisdiction of the Dominion Parliament should be supreme over all subjects which are of general public interest to the whole Dominion in whomsoever the property in such subject may be vested.

"It cannot be questioned that all the inhabitants of this Dominion, in whatever Province they may reside, have an interest in the regulation and protection of the Fisheries, whether they be Sea Coast or Inland, not as affording a large supply of food for the inhabitants of the Dominion, but a very extensive traffic also between the several Provinces and with *England* as well as with Foreign States, thus extending the trade and commerce external and internal of the Dominion, and this interest of the public in the Fisheries is not the less because in our Inland waters, consisting of Rivers and Lakes teeming with the finest fish, private persons may have property therein. Now, what is to be comprehended under the term 'Fisheries' as used in

1882

THE QUEEN v. ROBERTSON.

the 12th item of the 91st section of the *British North America* Act? In *Abbot's* Law Dictionary, the term is defined to be, 'the right to take fish at a certain place or upon particular waters.'

"Chancellor *Kent*, in his commentaries, defines common of Piscary to be 'a liberty or right of fishing in water covering the soil of another or in a river running through another man's lands'—'it is not,' he says 'an exclusive right, but one enjoyed in common with certain other persons.' Lord *Holt*, in 2 Salk, 637, said that it was to be resembled to the case of other commons.

"In the *Mayor of Carlisle* v. *Graham* (1) 'Common of Fishery' is distinguished from 'Common Fishery,' the former being defined to be a right enjoyed by several persons, but not the whole public, in a particular stream, and the latter, a right enjoyed by all the public as on the sea, or to the ebb and flow of the tide: 'Free Fishery,' is there defined to be a franchise in the hands of a subject existing by grant or prescription distinguished from an ownership in the soil; and 'Several Fishery' to be a private exclusive right of fishing in a navigable river or arm of the sea, but whether it must be accompanied with ownership in the soil, in that the authorities differ.

"Mr. *Hargrave* in his jurisconsult consultations on the distinction of Fisheries differs from *Blackstone*, who was of opinion that the ownership of the soil was essential to a several fishery; after quoting Lord *Coke's* argument, Mr. *Hargrave* says: 'At the utmost, they only prove that a several Piscary is presumed to comprehend the soil until the contrary appears, which is perfectly consistent with Lord *Coke's* position that they may be in different persons, and this indeed appears to be the true doctrine on the subject; and Chancellor *Kent* in his commentaries (2) says: 'The more

(1) L. R. 4 Ex. 361. (2) P. 412.

easy and intelligible arrangement of the subject would seem to be to divide the right of fishing into a right common to all and right vested exclusively in one or more persons.' In fresh water rivers, he says, 'that is, above the ebb and flow of the tide, the owners of the soil on each side had the interest and the right of fishery, and it was an exclusive right extending to the centre of the stream opposite their respective lands unless a special grant or prescription be shown.'

"In Lord *Fitz Walters* case (1), *Hale*, C.J., ruled that in the case of a private river the Lord having the soil, is good evidence to prove he has the right of fishing, and it put the proof on them that claim *liberam Piscariam*, i.e. a right of fishing distinct from ownership of the soil.

"The right of fishing, then, in rivers above the ebb and flow of the tide, may exist as a right incident upon the ownership of the soil or bed of the river or as a right wholly distinct from such ownership, and so the ownership of the bed of a river may be in one person, and the right of fishing in the waters covering that bed may be wholly in another or others.

"Now, that the *British North America* Act did not contemplate placing the title or ownership of the beds of fresh water rivers under the control of the Dominion Parliament so as to enable that Parliament to affect the title to the beds of such rivers sufficiently appears, I think, from the 109th section, by which 'all *lands*, mines, minerals and royalties belonging to the several Provinces of *Canada*, *Nova Scotia* and *New Brunswick* at the Union' are declared to belong to the several Provinces of *Ontario*, *Quebec*, *Nova Scotia* and *New Brunswick* in which the same are situate, and this term '*lands*' in this section is sufficient to comprehend the beds of all rivers in those ungranted lands. We

(1) 1 Mod. 105.

1882

THE QUEEN v. ROBERTSON.

must, however, in order to give a consistent construction to the whole Act, read this 109th section in connection with and subject to the provisions of the 91st section, which places 'all Fisheries' both sea, coast and inland under the exclusive Legislative control of the Dominion Parliament. Full effect can be given to the whole Act by construing it (and this appears to me to be its true construction) as placing the fisheries or right of fishing in all rivers running through ungranted lands in the several Provinces, as well as in all rivers running through lands then already granted, *as distinct and severed from the property in, or title to, the soil or beds of these rivers*, under the exclusive Legislative control of the Dominion Parliament. So construing the term 'Fisheries,' the control of the Dominion Parliament may be, and is, exclusive and supreme without its having any jurisdiction to legislate so as to alter in any respect the *title or ownership* of the beds of the rivers in which the Fisheries may exist. That title may be and is in the Grantees of the Crown where the title has passed, or may pass hereafter, by grants to be made under the seal of the several Provinces in which the lands may lie, but the exclusive right to control the 'Fisheries,' as a property or right of fishing distinct from ownership of the soil, is vested in the Dominion Parliament.

"So construing the term, it must be held to comprehend the right to control, in such manner as to Parliament in its discretion shall seem expedient, all deep sea fishing and the right to take all fish ordinarily caught either on the sea coast or in the great lakes or in the rivers of the Dominion, and which are valuable for food, within the Dominion, or for exportation for that purpose, or for any other purpose of trade and commerce, and must include as well the right to catch fish as the designation and control of the places where the fish

may be caught and the times and manner of catching; it must also, as it appears to me, be construed to comprehend all such rights of fishing and other matters relating to the 'Fisheries,' *as distinct from ownership of the bed of the streams*, and relating to the protection of the fish, as had been provided by legislation within any of the old Provinces, as the same were constituted before the passing of *British North America* Act. Now, many Acts had been passed by the Legislature of the old Province of *New Brunswick* for the regulation and protection of the fisheries in that Province between the 33rd *Geo.* 3rd, c. 9, and 26 *Vic.* c. 6, prohibiting among other things, the use of drift nets, the erection of any hedge, weir, fishgarth, or other incumbrance, or the placing any seine or net across any river, cove or creek in the Province in such manner as to obstruct or injure the natural course of the fish in any river where they usually go—regulating the construction of Mill dams—prohibiting also the fishing for Salmon and other fish at certain periods of the year, and giving to the Justices in General Sessions in each County power to establish such other rules and regulations as to them should seem fit for the better production and preservation of the fish within their respective counties, provided that such regulations should not be contrary to, and should not interfere with, the general regulations and restrictions contained in any Act of Assembly or private right. By chapter 101, of the Revised Statutes, the Governor in Council was authorized to appoint two wardens of Fisheries in any County, who should watch over and protect the fisheries, enforce the provisions of that Act, the rules of the Justices in Sessions, or of municipal authorities, and the regulations of the Governor in Council in relation to such fisheries.

"Section 5 authorized the Governor in Council to grant leases or licenses of occupation, for a term not

1882

THE QUEEN v. ROBERTSON.

exceeding five years, for fishing stations on ungranted shores, beaches or islands, which should terminate when such stations should cease to be used for such purpose, and that such leases or licenses should be sold at public auction, but that the right in lands and privileges already granted should not be affected thereby. This provision as to leases or licenses would seem to apply only to fishing in tidal waters, but 26 *Vic.* c. 6, which was in fact an amendment and consolidation of all previous Acts from c 101 of the Revised Statutes, enacted that the Governor in Council might grant leases or licenses for fishing purposes in rivers and streams above the tidal waters of such streams or rivers when the same belong to the Crown, or the lands are ungranted, that such leases or licenses should be sold by public auction after 30 days' notice in the Royal Gazette, the upset price being determined by the Governor in Council, but that the rights of parties in lands and privileges already granted should not be affected thereby, and that the rents and profits arising from such leases or licenses should be paid into the Provincial Treasury to a separate account to be kept, called 'The Fishery protection account.'

"In *Nova Scotia* also there were statutes of a somewhat similar character. Ch. 94 of Title 25 Revised Stat. (2nd series) regulated the Sea Coast Fisheries, and c. 95 the River Fisheries. The first section of this latter Act empowered the Sessions from time to time to make orders for regulating the River Fisheries, and subjected every person who should trangress such orders to a fine not exceeding £10 for each offence, and by section 6 it was enacted that the Sessions should annually appoint such and so many places on the rivers and streams as might be attended with the least inconvenience to the owners of the soil or the rivers as resorts for the purpose of taking fish, but that the same and the

enactments in the Act contained should not extend to any species of fish from the sea, except Salmon, Bass, Shad, Alewives and Gaspereaux.

"The 10th section regulated the Salmon fishing. So likewise in *Canada* an Act was passed, intituled 'An Act respecting fisheries and fishing,' Consolidated Statutes of *Canada*, 22 *Vic.*, c. 62, containing many like provisions, the first section of which authorized the Governor in Council to grant special fishing leases and licenses on lands belonging to the Crown for any term not exceeding nine years, and to make all and every such regulations as might be found necessary or expedient for the better management and regulation of the Fisheries of the Province. This Act was amended by the 29 *Vic.*, c. 11, the 3rd section of which (and from which the 2nd section of 31 *Vic.*, c. 60 would seem to be taken) purported to give the Commissioner of Crown Lands the authority which the latter Act and section purports to give to the Minister of Marine and Fisheries, and is as follows: 'The Commissioner of Crown Lands may, where the exclusive right of fishing does not already exist by law in favor of private persons, issue fishing leases and licenses for fisheries and fishing wheresoever situated or carried on, and grant licenses of occupation for public lands in connection with fisheries, but leases or licenses for any term exceeding nine years shall be issued only under authority of the Governor General in Council.'

"At the time of the passing of the *British North America* Act, the above recited Acts were in force in *New Brunswick*, *Nova Scotia* and *Canada* respectively, and by force of the 129th section continued so to be, after the passing of the Act, until the same should be repealed, abolished or altered by Parliament, and the effect was in fact the same as if the *British North America* Act had, for the protection and preservation of

1882

THE QUEEN v. ROBERTSON.

the fisheries, in precise terms, repealed those enactments and declared that the Dominion Executive should have full power to carry them into effect until the Parliament should repeal, abolish or alter those enactments or any of them, or make additional or other provisions in their stead—unlimited power is thus vested in the Parliament, either to maintain the then existing provisions or such of them as it should think fit, or in its wisdom to repeal, abolish or alter those provisions and to make such further and other, or the like provisions and enactments upon the subject, as to it should seem expedient. Now the Act under consideration, viz.: 31 *Vic.*, c. 60, maintains the like scrupulous respect for *private* rights as the old Acts which it repealed had done; for by the 2nd section the power given to the Minister of Marine and Fisheries to issue fishery leases and licenses is confined expressly to those places 'where the exclusive right of fishing does not already exist by law,' following the provision of the *Canada* Statute 29 *Vic.*, c. 11, section 3.

"In all matters placed under the control of Parliament, all private interests, whether Provincial or personal, must yield to the public interest and to the public will, in relation to the subject-matter, as expressed in an Act of Parliament. Constituted as the Dominion Parliament is after the pattern of the Imperial Parliament, and consisting as it does of Her Majesty, a Senate and a House of Commons, as separate branches, the latter elected by the people as their representatives, the rights and interests of private persons, it must be presumed, will always be duly considered, and the principles of the British Constitution, which forbids that any man should be wantonly deprived of his property under pretence of the public benefit or without due compensation, be always respected.

It is, however, in Parliament, upon the occasion of

the passing of any Act which may affect injuriously private rights, that those rights are to be asserted, for once an Act is passed by the Parliament in respect of any matter over which it has jurisdiction to legislate, it is not competent for this or any Court to pronounce the Act to be invalid because it may affect injuriously private rights, any more than it would be competent for the Courts in *England*, for the like reason, to refuse to give effect to a like Act of the Parliament of the United Kingdom, If the subject be within the legislative jurisdiction of the Parliament and the terms of the Act be explicit, so long as it remains in force effect must be given to it in all Courts of the Dominion, however private rights may be affected. There is no evil to be apprehended from giving, in our constitution, full effect to this principle, which is inherent in the British Constitution, nor would the transfer of jurisdiction to the Local Legislatures be any improvement, for experience does not warrant the belief that the interests of private persons in relation to any subject would be more respected, or the public interest be better protected, if such subject were placed under the control of the Local Legislatures instead of under that of Parliament.

"The Imperial Parliament, having supreme control over the title to, or ownership of, the beds and soil of the inland waters of the Dominion, and also over the franchise or right of fishing therein as a distinct property, has, at the request of the old Provinces of *Canada*, *Nova Scotia* and *New Brunswick* as the same were constituted before the passing of the *British North America* Act, so dealt with those subjects as, while leaving the title to the beds and soil of all rivers and streams passing through or by the side of lands already granted in the grantees of such respective lands, to place the franchise or right to fish as a separate pro-

1882

THE QUEEN v. ROBERTSON.

perty distinct from the ownership of the soil under the sole, exclusive and supreme control of the Dominion Parliament. Construing then the term 'Fisheries' as used in the *British North America* Act, as this franchise or incorporeal hereditament apart from and irrespective of the title to the land covered with water in which the Fisheries exist, it seems to me to be free from all doubt, that the jurisdiction of Parliament over all fisheries, whether sea, coast or inland, and whether in Lakes or Rivers, is exclusive and supreme, notwithstanding that in the rivers and other waters wherein such fisheries exist, until Parliament should legislate upon the subject, private persons may be seised and possessed of the fishing in such waters, either as a right incident to ownership of the beds and soil covered by such waters, or otherwise; and that therefore, the first question in the special case must be answered in the affirmative.

"The special case raises no question as to the terms of the particular instrument which has been used, nor whether it gives to the party named therein, assuming the Minister signing it to have the right to give, an exclusive franchise or privilege of fishing in the waters named during the period named; or only a right in common with others to whom a like privilege might be given as in *Bloomfield* v. *Johnson* (1), but for the reasons already stated it will be seen that, while by force of the statute, the form of the instrument (although it is not issued under the great seal of the Dominion, under which alone such a franchise could, by the course of the Common Law, be granted) may be sufficient to pass the franchise as distinct from the ownership of the bed or soil of the river, it cannot operate as a demise or transfer of the legal estate in the bed of the river to the Donee or Grantee or Licensee

(1) Ir. L. R. 8 C. L. 68,

1882

THE QUEEN v. ROBERTSON.

(which latter term seems to me to be the most appropriate) of the franchise. As to the residue of the questions submitted in the special case, it will be convenient to review the nature, condition and title to the particular property in question, namely:—the right of fishing in the *Miramichi* River prior to and at the time of the passing of the *British North America* Act, and to consider what the law as affecting such property then was.

"The special case states that the portion of the *Miramichi* River which is covered by the Fishery Lease to the Suppliant is above tidal waters and is navigable for canoes and boats and has been used from the earliest settlement of the Country as a highway for the same and for the purpose of floating down timber and log to market After the *St John*, the largest river in *New Brunswick* is the *Miramichi*, flowing northward into an extensive Bay of its own name It is 225 miles in length and seven miles wide at its mouth. It is navigable for large vessels 25 miles from the Gulf and for schooners 20 miles further to the head of the tide, above which for sixty miles it is navigable for tow boats. It has many large tributaries spreading over a great extent of Country.—*Price's Bend* is about 40 or 50 miles above the ebb and flow of the tide. The stream for the greater part from this point upwards is navigable for canoes, small boats, flat bottomed scows, logs and timber; logs are usually driven down the River in highwater in the Spring and Fall. The stream is rapid: during summer, it is in some places on the bars very shallow. In the salmon fishing season, say June, July and August, canoes have to be hauled over the very shallow bars by hand.

"On the 5th November, 1835, a Grant issued to the *Nova Scotia* and *New Brunswick* Land Company of 580,000 acres, which included within its limits that

1882

THE QUEEN v. ROBERTSON.

portion of the *Miramichi* River which is in question, and the said Grant contained with the usual granting clauses the following clause, 'excepting also out of the said tract of land described within the said bounds, all and every lot, piece or parcel of land which have been heretofore by us or our predecessors given or granted to any person or persons whatsoever, or to any body corporate by any grant or conveyance under the Great Seal of the Province of *New Brunswick*, or the Great Seal of the Province of *Nova Scotia*, during the period when the said hereby granted tract of land was part and parcel of our said Province of *Nova Scotia*, together with all privileges, &c., and also further excepting the bed and waters of the *Miramichi* River and the beds and waters of all the rivers and streams which empty themselves into the *St. John* or the River *Nashwaak* so far up the said rivers and streams respectively as the same respectively pass through or over any of the said heretofore previously granted pieces or parcels of land hereinbefore excepted.'

"The contention of Mr. *Lash* upon the part of the Crown as representing the Dominion Government is, that the admissions in the case establish the *River Miramichi*, at the *locus in quo*, to be a navigable river, and that, as such, the public at large had a common right of fishing therein, and that therefore there could be no exclusive right of fishing therein, even if the bed of the River had passed by the Grant to the *Nova Scotia* and *New Brunswick* Land Company, a point which however he disputes, contending that the bed of the River *Miramichi* is wholly excepted from the grant; and if the river be, as he contends it is, a public river, he contends that *Magna Charta* prevents any exclusive right of fishing therein. That the *St. Lawrence* and other great rivers of Old *Canada* and the great Lakes formed by them are public waters open to the public at

large, who have the right not only of navigation but of fishing also therein, unless in places which are covered by special grants, is too well established now to admit of a doubt. If the principle upon which *Dixon* v. *Scnetsinger* (1) was decided to be the correct principle, that right is established upon a firm basis in all those waters, wholly irrespective of the Common Law principle that such right is by the Common Law of *England* confined to tidal waters; but the same reasoning as in *Dixon* v. *Scnetsinger* was applied to the rivers of Old *Canada* will not apply to the rivers of *New Brunswick*, the right of fishing in which must be considered with reference to the Common Law of *England*. I find some difficulty in determining what is precisely meant by the expression in the special case, wherein it is admitted that the portion of the *Miramichi* river which is covered by the fishery lease to the Suppliant, 'has been used from the earliest settlement of the country as a highway for the same and for the purpose of floating down timber and logs to market'—for, by the plan which accompanies the grant to the *Nova Scotia* and *New Brunswick* Land Company, it would seem that for some 20 or 30 miles up the *Miramichi* river within the limits of the Company's grant and above the highest prior grant of any land upon the river above *Price's Bend*, the country was a dense forest without any settlement whatever, and higher up than the Company's grant there is not said to have been any settlement, nor is it said that there had been any licenses to cut timber granted by the Crown in any part of the tract upon the river above the remotest land which had been granted. I find it difficult therefore to understand, if this is what is meant to be admitted, how from the earliest settlement in *New Brunswick* that part of the river which runs through wild ungranted forest

(1) 23 U. C. C. P. 235.

1882

THE QUEEN v. ROBERTSON.

land in which there never had been any settlement whatever, nor, so far as appears by the case stated, any licenses granted to cut timber, could have been used as stated in the case 'as a highway and for the purpose of floating down timber and logs to market.' However, the case sufficiently establishes the character of the river, for it admits that the part in question is above *Price's Bend*, which is situate 40 or 50 miles above the ebb and flow of the tide, and that from this point upwards the river is navigable only for canoes, small boats, flat bottom scows, logs and timber, which latter are driven down the river in high water, in the spring and fall, and that in the months of June, July and August, which is the salmon fishing season, the water is so low that canoes have to be carried over the bars which are very shallow, and that consequently, during this period of the year, the river is not, at the part in question, navigable for flat bottomed boats, logs or timber. *Lloyd* v. *Jones* (1) is an authority that there is no connection between a right of fishing and a right of passage on a fresh water river—that is, above the ebb and flow of the tide, and that the existence of the latter right does not carry with it the former. *Creswell*, J., at page 84, puts the point thus 'what answer is it to plaintiff's complaint that the defendant unlawfully fished in his stream for the latter to say that he had a right of way over the *locus in quo*?' So from *Ewing* v. *Colquhoun* (2) it appears that a right of navigation in the public with boats, barges, rafts, &c., &c., on an inland river, involves no right of property in the river or its bed. The public have merely the right to use the river for passing to and fro upon it, in the same manner as they have a right of passage along a public road or foot path through a private estate, but the right of fishing in such a river by the riparian

(1) 6 C. B. 81. (2) 2 App. Cases 839.

proprietors, is a right of property vested in such proprietors, in virtue of their being seised of the *alveus* of the stream *ad medium filum aquæ*, which *primâ facie* all proprietors of land adjoining an inland river are; but if the *primâ facie* ownership is rebutted by shewing the *alveus* of the river to be in another, then the right of fishing in that river follows the proprietorship of the *alveus*, until it be shewn that a right to fish has been acquired either by grant or prescription by a person not seised of the *alveus*. 'Riparian proprietors' is a term applied by the civilians to the owners of water courses, and the use of the same significant and convenient term is now fully introduced into the Common Law: the soil of the bed itself and consequently the water may be, and most often is, divided between two opposite riparian owners, that is, the land on one side may be owned by one person and the land on the opposite side by another. When such is the case each proprietor owns to the middle, or, what is called the thread of the river; there is but one difference between a stream running through a man's land, and one which runs by the side of it; in the former case he owns the whole and in the latter but half (1). And in sec. 61 of his work on waters and water-courses *Angell* says: 'It will be seen by reference to the first chapter that where a person owns the whole of the soil over which a water-course runs in its natural course, he alone is entitled to the use and profits of the water, and that where a person owns only the land upon one side of a water-course, his interest in the soil and his right to the water extends to the middle of the stream: concomitant with this interest in the soil of the bed of water-courses is an exclusive right of fishing, so that the riparian proprietor, and he alone, is autho-

(1) Ang. Wat. sec. 10.

1882

THE QUEEN v. ROBERTSON.

rized to take fish from any part of the stream included within his territorial limits.' And *Hale, Jure maris*, p. 5 of *Hargrave's* tracts, says: 'Fresh water rivers of what kind soever do of common right belong to the owners of the soil adjacent, so that the owners of one side have of common right the *propriety*, that is, the property of the soil, and consequently the right of fishing *usque ad filum aquæ*, and the owners of the other side the right of soil or ownership and *fishing* unto the *filum aquæ* on their side; and if a man be owner of the land on both sides, in common presumption he is owner of the whole river, and hath the right of fishing according to the extent of his land in length.' When we speak then of the riparian proprietor or proprietors having the exclusive right of fishing in the river passing through or by the side of his or their lands, what is meant by the term 'riparian proprietor' is the owner of the whole bed of the stream as well as of the land through which the stream passes, *or* the owners of the land on either side and of the bed of the stream, each on his own side *ad medium filum aquæ*, which every owner of land upon either side of a stream is presumed to be until the contrary is shewn.

"Chancellor Kent, in his commentaries, says: 'It was a settled principle of the Common Law that the owners of lands on the banks of fresh water rivers, above the ebbing and flowing of the tide, had the exclusive right of fishing, as well as the right of property opposite their respective lands, *ad medium filum aquæ*, and where the lands on each side of the river belonged to the same person, he had the same exclusive right of fishing in the whole river, so far as his land extended along the same. The right exists in the rivers of that description, though they be of the first magnitude, and navigable for rafts or boats, but they are subjected to the *jus publicum* as a common highway

or easement. In rivers not navigable (and in the Common Law sense of the term, they were only deemed to be navigable as far as the flux and reflux of the tide,) the owners of the soil on each side had the interest and the right of fishery, and it was an exclusive right extending to the centre of the stream opposite their respective lands. This private right of fishing is confined to fresh water rivers, that is to rivers above the ebb and flow of the tide, unless a special grant or prescription be shewn, but the right of fishing in the sea and in the bays and arms of the sea and in navigable tide water rivers belongs to the general public, and any person asserting an exclusive privilege there must shew it strictly by grant or prescription.'

"In *Murphy* v. *Ryan* (1) it was held that the public cannot acquire, by immemorial usage, any right of fishing in a river, in which, though it be navigable, in fact the tide does not ebb and flow, and that the term 'Navigable' used in a legal sense as applied to a river in which the soil *primâ facie* belongs to the Crown and the fishing to the public, imports that the river is one in which the tide ebbs and flows.

"This case is one of great authority, not only for the learning of the learned Judges who decided it, but because it is cited with approbation by the Court of Exchequer in *England*, in the *Mayor of Carlyle* v. *Graham* (2). In pronouncing the judgment of the Court *O'Hagan*, J., afterwards and now again, Lord Chancellor of *Ireland*, says: 'According to the well established principles of the Common Law, the proprietors on either side of a river are presumed to be possessed of the bed and soil of it moietively to a supposed line in the middle constituting their legal boundary, and, being so possessed, have an exclusive right to the fishery in the water which flows above their respective territories, though the law

(1) Ir. L. R. 2 C. L. 143. (2) L. R. 4 Ex. 361.

1882

THE QUEEN v. ROBERTSON.

secures to the public the right of navigation upon the surface of that water, as a public highway which individuals are forbidden to obstruct,and precludes the riparian proprietors from preventing the progress of the fish through the river. But, whilst the right of fishing in fresh water rivers in which the soil belongs to the riparian proprietors is thus exclusive, the right of fishing in the sea, and in its arms and estuaries, and in its tidal waters, wherever it ebbs and flows, is held by the Common Law to be *publici juris*, and to belong to all the subjects of the Crown, the soil of the sea and its arms and estuaries and tidal waters being vested in the Sovereign as a trustee for the public.'

He proceeds then to demonstrate by reference to authorities that a navigable river, in the sense of the public having a common right to fish in it, must be a tidal river, and that the right to fish therein '*publici juris*,' is confined to the ebb and flow of the tide. 'There are,' (he says) 'two kind of rivers, navigable and not navigable. Every navigable river, so high as the sea ebbs and flows in it, is a royal river, and the fishing of it is a royal fishery and belongs to the King by his prerogative, but *in every other river* not navigable and in the fishery of such river the terretenants on each side have an interest of common right.' Quoting then *Hale* (1), he says, 'upon a full consideration of all the cases it will, I think, appear, that no river has been ever held navigable, so as to vest in the Crown its bed and soil and in the public the right of fishing, merely because it has been used as a general highway for the purpose of navigation, and that beyond the point to which the sea ebbs and flows, even in a river so used for public purposes, the soil is *primâ facie* in the riparian owners, and the right of fishing *private*.'—And so he concludes that the public can maintain no claim of

(1) De Jure maris, p. 11.

right to fish in a river the soil of which is not *publici juris* but private property.

"In *Bloomfield* v. *Johnson* (1), where the Crown had granted lands adjoining to *Lough Erne* and islands in the lake, it was held that although the lake was a public navigable highway, yet that being above the flux and reflux of the tide, and although it was held that the ordinary presumption that the bed and soil of a stream opposite their lands belongs to the riparian proprietors, did not extend to a large lake like *Lough Erne*, the public had not any right of fishing therein of common right.

"In *Bristow* v. *Corcoran* (2) it was held by the House of Lords that *de jure* the Crown had not *primâ facie* a right to the soil or fisheries in a lake like *Lough Neagh*, and that therefore the plaintiff, who claimed a right of fishing in the lake under a grant from *Charles* II, had to prove that the King at the time of such grant had an estate to grant; that it was not to be presumed. Lord *Cairns* there says: 'The lake contains nearly 100,000 acres, but, although it is so large, I am not aware of any rule which could *primâ facie* connect the soil and fisheries with the Crown, or *disconnect them from the private ownership of riparian proprietors or other persons*,' and Lord *Blackburn* says: 'It is clearly and uniformly laid down in our books that where the soil is covered by water, forming a river in which the tide does not flow, the soil of *common right* belongs to the adjoining lands, and there is no case or book of authority to shew that the Crown, of common right, is entitled to land covered with water where water is not running water, but still water forming a lake.'

"In *Malcolmson* v. *O'Dea* (3), *Willes*, J., delivering to the House of Lords the opinion of the Judges, says:

(1) Ir. L. R. 8 C. L. 68. (2) 3 App. Cases 641.
(3) 10 H. L. 618.

1882

THE QUEEN v. ROBERTSON.

'The soil of navigable tidal rivers, like the *Shannon*, so far as the tide ebbs and flows, is *primâ facie* in the Crown, and the right of fishing *primâ facie* in the public, but for *Magna Charta* the Crown could, by its prerogative, exclude the public from such *primâ facie* right, and grant the exclusive right of fishing to a private individual, either together with or distinct from the soil.'

"*Rolle* v. *Whyte* (1) and *Leconfield* v. *Lonsdale* (2) decide that the provisions of *Magna Charta* and of the early statutes regulating fisheries, including 17 *Ric.* 2, ch. 9, and 12 Ed. 4, ch. 7, apply only to rivers navigable in the Common Law sense of the term, *i. e.* to the flux and reflux of the tide. *Rowe* v. *Titus* (3) and *Esson* v. *McMaster* (4) bear wholly upon a question as to the right of the public to the easement of passage along certain rivers in *New Brunswick* with boats, rafts, and other property, and the rivers were held not to be navigable, but to be of common right public highways upon which the public had a right of passage, to which right the title of the owners of the soil and of the rivers was subservient. No reference is made in these cases to the right of fishing.

"The great weight of authority in the *United States of America* accords with the decisions of the British Courts. In *Palmer* vs. *Mulligan* (5) it was held in the Supreme Court of the State of *New York*, *Kent* being C.J., in 1805, that the river *Hudson* at Stillwater, which is above the flux and reflux of the tide, was not navigable in the Common Law sense of the term, citing the River *Bar* case (6), *Carter* v. *Murcot* (7), and *Hale*, *de Jure Maris* from *Hargrave* (8).

*Kent*, C. J., says: 'The *Hudson* river is capable of being held and enjoyed as private property, but is not-

(1) L. R. 3 Q. B. 286.
(2) L. R. 5 C. P. 657.
(3) 6 New Bruns. R. 332.
(4) 3 New Bruns. R. 501.
(5) 3 Cai. 318.
(6) Davies 152.
(7) 4 Burr. 2162.
(8) Pp. 5, 8, 9.

1882

THE QUEEN v. ROBERTSON.

withstanding to be deemed a public highway for public uses, such as that of rafting timber, to which purpose it has heretofore been and still is beneficially subservient.'

"In *Carson* v. *Blazer* (1), it was held in the State of *Pennsylvania* in 1810, that the Patent, under which the proprietors of land abutting on the River *Connecticut* held under *William Penn*, did not pass to them the bed of the river above tide water, or any right of Fishery therein, and that the river and the fisheries therein, above tide water, belonged to the State; the Court in this case held that the Common Law of *England* rule as to the flux and reflux of the tide determining the character of a navigable river, did not apply to a river like the *Connecticut*: however, in *Adams* v. *Pease* (2) the Supreme Court of the State of *Connecticut*, in 1818, held that the owners of land adjoining the *Connecticut* river, above the flow and ebb of the tide, have an exclusive right of fishing opposite to their land to the middle of the stream, but that the public have an easement in the river as a highway for passing and repassing with any kind of water craft; the Chief Justice pronouncing the judgment of the Court, says: 'By the Common Law, in the sea, in navigable rivers and in navigable arms of the sea, the right of fishing is common to all. In rivers not navigable, the adjoining proprietors have the exclusive right. Rivers are considered to be navigable in the Common Law sense as far as the sea flows and reflows, and thus far the common right of fishing extends; above the ebbing and flowing of the tide the fishery belongs exclusively to the adjoining proprietors, and the public have a right or easement in such rivers as common highways for passing and repassing with vessels, boats, or any water craft—a more perfect system of regulations on the subject could not be devised. It secures common rights so far as the public interest requires and furnishes a

(1) 2 Binn. 475. (2) 2 Conn. 481.

1882

THE QUEEN v. ROBERTSON.

proper line of demarcation between them and private rights.'

"In the *People* v. *Platt* (1), it was held by the Supreme Court of the State of *New York*, in 1818, that the right to take fish in the *Saranac*, a river falling into Lake *Champlain*, could not be a public right, for if the river had been granted, the right to take the fish was a private and individual right, and if it had not been granted, yet the right has not become public so as to authorize the entry of any one who might see fit to enter, for the right would belong to the State; and citing *Hale*, Lord *Fitzwalter's* case, and *Carter* v. *Murcott* (2) the Court says 'these authorities have never been denied or over-ruled and are of unquestionable authority.' Referring to this case the same Court in 1882, in *Hooker* vs. *Cummings* (3), says: 'In the *People* vs. *Platt* we recognized the principles of the Common Law to be that in the case of a private river (that is where it is a fresh water river in which tide does not ebb or flow, and is not therefore an arm of the sea) he who owns the soil has *primâ facie* the right of fishing, and if the soil on both sides be owned by one individual he has the sole and exclusive right, but if there be different proprietors on each side they own on their respective sides *ad medium filam aquæ*. We considered in the case referred to, that it was not inconsistent with this right that the river was liable and subject to the public servitude for the passage of boats The private rights of the owners of the adjacent soil were not otherwise affected than by the river being subject to public use, this is recognized as having been decided in *Palmer* v. *Mulligan* (4), and *Adams* v. *Pease* (5).' And referring to *Carson* v. *Blazer* (6),

(1) 17 Johns. 211.
(2) 4 Burr. 2162.
(3) 20 Johns. 97.
(4) 3 Cai. 318.
(5) 2 Conn. 481.
(6) 2 Binn. 475.

1882

THE QUEEN v. ROBERTSON.

*Spencer*, J. C., delivering judgment, says: 'I do not feel myself authorized to reject the principles of the English Common Law by saying that they are not suited to our condition, when I can find no trace of any judicial decision to that effect, nor any legislative declaration or provision leading to such conclusion,' and he adopts the encomium passed upon the Common Law of *England* by the Chief Justice of the Supreme Court of the State of *Connecticut* in *Adams* v. *Pease*. The principles to be deduced from all these cases seem to be, that in the estimation of the Common Law all rivers are either navigable or not navigable, and rivers are only said to be navigable so far as the ebb and flow of the tide extends. Rivers may be navigable *in fact*, that is, capable of being navigated with ships, boats. rafts, &c., &c., yet be classed among the rivers not navigable in the Common Law sense of the term, which is confined to the ebb and flow of the tide. Rivers which are navigable in this sense are also called public, because they are open to public use and enjoyment freely by the whole community, not only for the purposes of passage, but also for fishing, the Crown being restrained by *Magna Charta* from the exercise of the prerogative of granting a several fishery in that part of any river. Non-navigable rivers, in contrast with navigable or public, are also called private, because although they may be navigable in fact, that is, capable of being traversed with ships, boats, rafts, &c., &c., more or less according to their size and depth, and so subject to a servitude to the public for purposes of passage, yet they are not open to the public for purposes of fishing, but may be owned by private persons, and in common presumption are owned by the proprietors of the adjacent land on either side, who, in right of ownership of the bed of the river, are exclusive owners of the fisheries therein

1882

THE QUEEN v. ROBERTSON.

opposite their respective lands on either side to the centre line of the river. *Magna Charta* does not affect the right of the Crown, or restrain it in the exercise of its prerogative of granting the bed and soil of any river above the ebb and flow of the tide, or of granting exclusive or partial rights of fishing therein as distinct from any title in the bed or soil, and in fact Crown grants of land adjacent to rivers above the ebb and flow of the tide, notwithstanding that such rivers are of the first magnitude, are presumed to convey to the Grantee of such lands the bed or soil of the river, and so to convey the exclusive right of fishing therein to the middle thread of the river opposite to the adjacent land so granted. This presumption may be rebutted, and if, by exception in the grant of the adjacent lands, the bed of the river be reserved, still such reservation does not give to the public any common right of fishing in the river, but the property and ownership of the river, its bed and fisheries remain in the Crown, and the bed of the river may be granted by the Crown, and the grant thereof will carry the exclusive right of fishing therein; or the right of fishing, exclusive or partial, may be granted by the Crown to whomsoever it pleases, just as any private person seized of the bed of the river might dispose thereof. This right extends to all large inland Lakes also, for although in their case the same presumption may not arise as does in the case of rivers, namely, that a grant of the adjacent lands conveys *primâ facie* the bed of the river (as was decided in *Bloomfield* vs. *Johnson*), still the prerogative right of the Crown to grant the bed of rivers above the ebb and flow of the tide, not being affected by the restraints imposed by *Magna Charta*, cannot be questioned, for all title of the subject is derived from the Crown, and so if a bed of a river, or the right of fishing therein, be reserved by the Crown from a grant of adjacent lands,

the right and title so reserved remains in the Crown, in the same manner as it would have vested in the grantee if not reserved, and is not subject to any common right of fishing in the public; for, as was said by Lord *Abinger*, C. J., in *Hull* vs. *Selby Ry. Co.* (1), 'as all title of the subject is derived from the Crown, the Crown holds by the same rights and with the same limitations as its grantee.' So in *Bloomfield* v. *Johnson* above cited, it was held that a grant by the Crown of a free fishery in the waters of *Lough Erne* did not pass a several or exclusive right of fishery therein, but only a license to fish on the property of the grantor, and that the several fishery remained in the Crown subject to such grants or licenses to fish as it might grant In old *Canada* the right of the Crown to make such grants of the bed of the great lakes is recognized by Act of Parliament

"Although the exercise of the prerogative of the Crown to grant a several fishery in waters where the tide ebbs and flows is restrained by *Magna Charta*, still the right of Parliament in its wisdom (in the exercise of its paramount control in the interests of the public, and as the exponent of the voice of the nation as regards all property), to authorize such grants there, equally as in waters above the ebb and flow of the tide, is undoubted.

"I speak here of the Parliament of the United Kingdom, and the like power, over all subjects placed by the *British North America* Act under the control of the Parliament of *Canada*, is vested in that Parliament.

"As regards then the particular river in question, at the place in question, above *Price's Bend*, notwithstanding that it may be true that it is subject to a servitude to the public for a common right of passage over its waters, as to which I express no opinion, inas-

(1) 5 M. & W. 327.

1882

THE QUEEN v. ROBERTSON.

much as the determination of that point is unnecessary in the case before me, but assuming the river to be subject to such servitude, still, the river there partakes not of a character of a navigable or public, but of a non-navigable or private river, in the sense in which these terms are used in law, and the public have no common right of fishing therein.

"The *primâ facie* presumption being that the owners of the adjacent lands are owners of the bed of the river, which presumption may be rebutted, it is necessary now to consider the point, which is urged upon behalf of the Crown as representing the Dominion Government in this case, namely that the presumption is rebutted by matter appearing upon the grant to the *Nova Scotia* and *New Brunswick* Land Company, which is made part of the case and has been produced in evidence, for, if not rebutted, the exclusive right of fishing passed by that grant to the Company, and the Act of Parliament, 31 *Vic.*, c. 60, does not affect, or in its 2nd section profess to deal with, any fisheries in which an exclusive right of fishing had been conveyed by the Crown and was vested in any person at the time of the passing of the Act.

"The clause in the letters patent conveying the land to the land company which is relied upon in support of this contention is the latter part of the exception above extracted, namely: 'And also further excepting the bed and waters of the *Miramichi* River, and the beds and waters of all the rivers and streams which empty themselves either into the River *St. John* or the River *Nashwaak*, so far up the said rivers and streams respectively as the same respectively pass through, or over any of the said heretofore previously granted tracts, pieces or parcels of land hereinbefore excepted.'

"This exception, it is urged, is open to two constructions, the one that insisted upon by Mr. *Lash*, upon

behalf of the Dominion Government, namely: that the bed of the *Miramichi* River is excepted absolutely throughout its whole length, and the beds of the other rivers and streams flowing into the River *St. John* and *Nashwaak* qualifiedly, that is to say, "so far up those rivers and streams respectively, &c., &c.", and the other that insisted on by Mr. *Haliburton*, upon behalf of the Suppliants, namely: that the qualification involved in the words 'So far up the river and streams respectively, &c, &c.,' is to be attached to the exception as to the bed of the *Miramichi* River as well as to the beds of the other rivers and streams mentioned in the same sentence.

"Which of these two constructions is the correct one depends upon the determination of the question—what should be held to have been the intention of the Crown in making the grant of the lands mentioned in the letters patent containing the exception? 'It is always' (says Sir *John Coleridge*, delivering the judgment of the Privy Council in *Lord* v. *City of Sidney* (1) upon a question as to the construction of a Crown grant) 'a question of intention to be collected from the language used with reference to the surrounding circumstances. Words in an instrument of grant, as elsewhere, are to be taken in the sense in which the common usage of mankind has applied to them in reference to the context in which they are found.' And the same construction, I may add, is to be put upon words in a grant of land by the Crown which has been established by the decisions of the Courts to be the proper construction to be put upon the same words in a grant between subject and subject. Now, for the purpose of assisting in arriving at the intention of the Crown as to the use of the above words in the letters patent to the *Nova Scotia* and *New Brunswick* Land Company, as well as for the purposes

(1) 12 Moo, P. C. 473.

1882

THE QUEEN v. ROBERTSON.

of the 6th Question in the special case, namely: '6thly have the grantees in grants of lots bounded by the said rivers or by any part thereof and excepted from the said company's grant any exclusive or other right of fishing in said river opposite their respective grants?' copies of 16 letters patent have been produced, 5 of which grant lands situate upon the *Miramichi*, and 9 lands situate upon the other rivers and streams mentioned in the letters patent to the *Nova Scotia* and *New Brunswick* Land Company running through the tract of land granted to that Company, falling into the rivers *St. John* and *Nashwaak*, and it is admitted that all other grants to others within the lines constituting the boundaries of the tract described in the letters patent to the company are in similar form to those of which the copies have been supplied. Copies also of two letters patent granting large tracts of land amounting to about 25,000 acres, immediately outside of and abutting upon the limits of tract described in the letters patent to the *Nova Scotia* and *New Brunswick* Land Company, have been produced.

"From a perusal of these several letters patent, it appears that, as regards the title to the soil and beds of the said several rivers alike, the language of all the letters patent is the same, the practice of the Crown was uniform throughout. Now, the established rule of law is that *primâ facie* the proprietor of each bank of a stream is the proprietor of half the land covered by the stream, and that a description which extends 'to the water's edge,' or 'to a river' or 'to the river's bank,' or which begins at a stake, tree, or other monument 'by the side of a river' or 'in a river's bank,' and which runs 'up' or 'down the river,' or 'its bank,' or 'by the side of the river,' or 'following its courses,' or to a stake, tree, or monument 'by the side of the river,' or 'on the river's bank,' or the like, carries the

grant to the thread of the stream. In all such cases, the grant covers the bed of the stream, unless there be some expression in the terms of the grant, or something in the terms of the grant taken in connection with the situation and condition of the land granted, which clearly indicates an intention that the grant should stop at the edge or margin of the river, and should exclude the river from its operation. There must be a reservation or restriction, expressed or necessarily implied, to control the general presumption of law and to make the particular grant an exception from the general rule. This is the established doctrine, not only in *England*, but in the Courts of the *United States of America* also, as will sufficiently appear from the cases already cited and from *Wright* v. *Howard* (1), *Kairns* v. *Turville* (2), *Tyler* v. *Wilkinson* (3), *Robertson* v. *Whyte* (4), *Lowell* v. *Robinson* (5), *Child* v. *Starr* (6), *Luce* v. *Carley* (7), *Howard* v. *Ingersoll* (8), and Chancellor *Kent's* Comm. vol. 3, p. 427.

"Tried according to the principle laid down in the above cases, it cannot admit of a doubt that the description of boundaries in every one of the letters patent which have been produced and above referred to include and convey to the several grantees of the land therein respectively described the soil and bed, not only of all the streams and rivers which flow into the rivers *St. John* and *Nashwaak*, but also of the River *Miramichi*, and in truth of the *Nashwaak* itself, where the rivers pass through or abut upon the lands described, and as it is part of the admissions in the case, that all other grants of land situate within the outside limits of the tracts described in the letters patent of

(1) 1 Sim. & St. 263.
(2) 32 U. C. Q. B. 17.
(3) 4 Mason 400.
(4) 42 Me. 200.
(5) 4 Shep. 357.
(6) 4 Hill 319.
(7) 24 Wend. 451.
(8) 13 How. 416.

1882

THE QUEEN v. ROBERTSON.

the 5th November, 1835, to the *Nova Scotia* and *New Brunswick* Land Company, are in like form with those above recited, it must be concluded as not admitting of a doubt, that every grant which had been made, prior to the 5th November, 1835, of land lying within the limits of the description of the tract described in the letters patent of that date, passed and conveyed to the several grantees of such lands without exception the bed and soil of the River *Miramichi*, as well as the bed and soil of all the rivers and streams flowing into the *St. John* and *Nashwaak*, in accordance with the general presumption and rule of law when the lands granted abutted upon any of the said rivers.

"This being established, it only remains to be considered whether the terms of the grant contained in the letters patent of the 5th November, 1835, are so explicit as to reverse the general presumption of law, and to indicate clearly the intention of the Crown to be to make the grant to the *Nova Scotia* and *New Brunswick* Land Company an exceptional grant and different in this particular from all prior grants made by the Crown in that locality, and which, within the limits mentioned in the letters patent of the 5th November, 1835, comprised 206,000 acres of the 795,000 acres constituting the gross contents of the tract, the outside limits of which are given in those letters patent.

"We must reasonably conclude that the object of the grant to the Company was to use the Company as an instrument for facilitating the settlement of the Province of *New Brunswick*, in like manner as in the case of a similar grant, which had been made some years previously in *Canada*, to the *Canada* Company. It was necessary to the full enjoyment of the grant and to ensure success to the undertaking of the Company by the settlement of the country, that the settlers should have the right and power to erect mills and to use the

power of the rivers by dams across them for the purpose of driving the mills; this they could not do in those rivers and streams, if any there were, whose beds and soil were excepted from the grant to the Company.

"No possible reason has been suggested or can be assigned why the Crown should make the grant to this Company an exception from all previous grants made in the same locality, and so obstruct what must have been the object of the grant, namely, the settlement of the Province; or why the River *Miramichi* should be made an exception from all the other rivers and streams; or why the River *Miramichi* itself, where in its course it abutted upon lands granted to the Company, should be excluded from the grant, while the soil and bed of the same river where it abutted upon land granted to other persons, had been included in those grants and passed to the respective grantees of the adjoining lands; —or in the language of the Judgment of the Privy Council in *Lord* v. *the Commissioners of the City of Sydney* (1), 'why the Crown should have reserved what might be directly and immediately useful to the grantees, and could not have been contemplated to be of any use to the Crown, and this too in an infant Colony where it was the manifest and avowed policy to encourage settlement and the cultivation of lands by grant on the easiest and most favorable terms.'

"We must then give to the letters patent of the 5th November, 1835, such a construction as shall be consistent with the previous uniform practice of the Crown and with the general presumption of law, and so as to make the grant valuable in view of the purpose which it must have had in view, and not so as to derogate from that value, unless the terms and expressions in the grant are so peremptory and clear as to place beyond doubt that the intention of the Crown was to exclude

(1) 12 Moo. P. C. 473.

1882

THE QUEEN v. ROBERTSON.

from the grant to the Company the bed of the *Miramichi* River, where it abuts upon lands granted to the Company. The only construction, which, in accordance with the above principles, can, in my judgment, be properly given to the letters patent of the 5th November, 1835, is, that the exception therein affects the *Miramichi* only in the same manner, and to the same extent, as it affects the other rivers and streams therein mentioned, namely: all those falling into the rivers *St. John* and *Nashwaak*, and consequently that the exception is limited to the bed and soil of the *Miramichi* river, as it is to the bed and soil of the said other rivers and streams, namely, opposite to the lands which had previously been granted on the banks of the rivers.

"The form of the description in the letters patent of the 5th November, which the draftsman has made to comprehend within the limit of the tract described 206,000 acres which had already been granted, much of which was situate upon the banks of the said several rivers, made it necessary to except from the grant to the Company whatever had been previously granted and the bed and soil of the rivers opposite the lands so granted. This affords a rational cause, and indeed the only apparent rational cause for the exception being inserted at all, and consequently the letters patent must be so construed as to limit the application of the exception to this rational purpose. It was suggested that if the bed and soil of the rivers opposite to the lands previously granted had passed to the grantees of such lands, the exception of those lands, which is also expressed in the letters patent of the 5th November, would have been sufficient to comprehend also the beds of the rivers; but, granting this to be so, it is plain that whether the beds of the rivers had or not passed by the previous grants of lands situate on their banks, the draftsman of the letters patent of the 5th November

has, *ex majori cautelà* inserted an express exception of the beds of the rivers and streams flowing into the *St. John* and *Nashwaak*, where such rivers and streams abutted on lands already granted. This is not disputed, but the contention is, that in the case of the *Miramichi*, the exception is not to be construed as being so limited, but is absolute. But for this distinction, no reason whatever is suggested, and I have shewn that in the previous grants the *Miramichi* river was precisely in the same position as all the other rivers, and that in the case of all alike the beds of rivers abutting on lands granted had been granted and had passed to the grantees of lands.

"The letters patent are capable of the construction, that the exception shall be limited in the case of the *Miramichi*, equally as in the case of the other rivers and streams, and as that construction is most consistent with the uniform practice of the Crown, and with what must have been the object of the company in acquiring the lands granted, with the general presumption of law, and with reason and common sense, that is the construction which must be given to the letters patent. It follows that the *Miramichi* river, where the lands granted to the *Nova Scotia* and *New Brunswick* Land Company abut upon it, is excluded from the operation of the Fisheries Act 31 *Vic.* c. 60, for there an exclusive right of fishing had passed to the company, their successors and assigns, by the letters patent of the 5th November, 1835.

"It was urged, it is true, but scarcely I think seriously, that by force of the 108 sec. of the *British North America* Act, and of the 5th item of the 3rd schedule annexed to the Act, namely: 'Rivers and Lake improvements,' the bed and soil of the *Miramichi*, as well as the beds and soil of every river in the Dominion, is declared to be 'the property of *Canada*.'

1882

THE QUEEN v. ROBERTSON.

The sole ground for this contention is that the word 'Rivers' as printed in the schedule is plural, while the word 'Lake' is singular, and that if it had been intended that the word 'improvements' should be read in connection with the former as with the latter it would have been printed 'River' in the singular as in the word 'Lake.' To this it was replied that the absence of a comma after the word 'Rivers' afforded as good an argument, that the word 'Improvements' was intended to be read in connection with the word 'Rivers' as with 'Lake,' notwithstanding the affix of a final 'S' to the former. I confess I think both arguments are of about equal weight, and I do not think it profitable to enquire whether the affix of the letter 'S' or the omission of a comma is the act of the printer or of Parliament, for by 108 section of the Act, it is clear that the things which are by that section, made the property of *Canada*, are 'the public works and property of each Province' enumerated in the 3rd schedule. Whether, therefore, the word be printed 'River' or 'Rivers' in the 3rd schedule, the result is the same, and the word 'Improvements' must be read with it, to indicate the 'Public Work' which having been the property of the Province in which it had been situate, is made the property of *Canada*.

"I have thus substantially answered all or most of the questions submitted in the special case, but it may be convenient briefly to give my answers thus:

"The first, third, fourth and sixth questions must be answered in the affirmative, and the second and seventh in the negative.

"To the 5th it is unnecessary to give any special answer, as I am of opinion that the bed of the river did pass to the Company. However, it may be said that if it had not so passed, the case offers no evidence of any exclusive right of fishing therein having passed

to the Company, which right in such case could only be by grant or prescription. I have in my judgment explained at length my views upon the rights of riparian proprietors and of what is meant by that term.

"To the 8th it may be answered, that if what is meant by this question as framed is, whether the Minister of Marine and Fisheries could lawfully issue a lease of the bed of the River, where it passes through ungranted lands, I am of opinion that he could not, but that the Act does authorize him to issue, and therefore he could lawfully issue, a license to fish, as a franchise apart from the ownership of the soil in that portion of the River.

"The 109 sec. of the *British North America* Act already quoted declare that 'all *lands*, mines, minerals and royalties belonging to the several Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* at the Union, shall belong to the several Provinces of *Ontario*, *Quebec*, *Nova Scotia* and *New Brunswick* in which the same are situate.' Now, whether this section is to be regarded as sufficient to transfer the *legal estate* in those lands to the several Provinces as corporations, or as a declaration merely that they shall be held by the Crown in trust for, and as part of the public *demesne* of, the respective Provinces, matters not, as it appears to me, in so far as the question under consideration is concerned, for what is declared shall belong to the newly created Provinces is that which at the Union belong to the Provinces as formerly constituted, and those lands which had not yet been granted were already subject to a like provision in virtue of Acts of Parliament relating to the Fisheries in existence before the Union, which Acts, the 129 section of the *British North America* Act declares shall continue in existence after the Union until repealed, abolished or altered by Act of the Dominion Parliament. The effect then of the 109th sec-

1882

THE QUEEN v. ROBERTSON.

tion must be to make the lands part of the public domain of the respective Provinces, subject to the provisions of the several Acts in force relating to the fisheries at the time of the Union, and to such other or the like provisions as the Parliament of *Canada* should enact upon the subject of the Fisheries, treating that term as relating to the incorporeal hereditament or *liberæ piscariæ* as already explained, which subject was placed under the exclusive control of the Parliament, and the expression in the 2nd section of the Dominion Act, 31 *Vic.*, ch. 60, namely, 'where the exclusive right of fishing does not already exist by law' must, I think, be construed to include that part of the public domain in the respective Provinces consisting of ungranted lands, over which, not having been converted into private property, no exclusive right of fishing could be legally established by any person.

"Over these ungranted lands the Dominion Parliament had, in my judgment, for the reasons already given above, the undoubted right to legislate in the manner provided in the 2nd section of the 31 *Vic.*, ch. 60, and that section does, I think, sufficiently cover those lands which, prior to the passing of 31 *Vic.*, ch. 60, were, as I have shown, subject to a like provision, and the frame of the 2nd section of that Act, when compared with the corresponding sections in the Acts which were in force until repealed by 31 *Vic.*, ch. 60, leads to the conclusion that the same lands were referred to in the latter Act as in the like connection were referred to in the former, namely, ungranted public lands.

"I have entered into the subject as fully as I could, in order that I might make my judgment upon all the points as clear as I am capable of doing, for the reason that in the event of an appeal I shall not sit upon the case in appeal. The Court of Exchequer being composed of the same Judges as are the judges of the Supreme

Court, an appeal from the judgment of a single judge of the Court of Exchequer to the Supreme Court is in substance and effect simply an appeal from one of the Judges to the full Court. To avoid the possible anomaly of the full Court being divided, and the judgment nevertheless of one of the Judges of the divided Court remaining of record as a judgment of the Court, it is a point worthy of Parliamentary consideration, whether it may not be expedient to enact that an appeal from a single Judge of the Exchequer Court should be heard only by the other Judges, so that in every case of appeal from the Exchequer Court in order to sustain any judgment, as the judgment of the Court, there should be a *majority* of all the judges constituting the Court in favor of it.

"The constitution of the Court of Exchequer makes a marked difference between the case of an appeal from that Court, when the Appellate Court is divided, and the case of an appeal from an independent Court consisting of other Judges than those constituting the appellate tribunal when the latter is divided.

"The Judgment of the Court therefore is that a rule shall issue in the terms of the provisions of the special case, referring it to the Registrar to take an account as agreed upon by the concluding paragraph of the case."

The following rule was taken out:

"The special case stated by the parties for the opinion of this Court having come on to be heard and debated before this Court in the presence of counsel for the suppliant and for Her Majesty. Upon debate of the matter and hearing what was alleged by counsel on each side and upon reading the documents and papers filed, this Court did order that the said case should stand over for judgment, and the same coming on this day for judgment this Court doth order and declare that the first, third, fourth and sixth questions submitted in

1882

THE QUEEN v. ROBERTSON.

said special case should be answered in the affirmative and the second and seventh questions in the negative. This Court doth further declare that it is unnecessary to give any special answer to the fifth question as this Court is of opinion that the bed of the south west *Miramichi* river within the limits of the grant to the *Nova Scotia* and *New Brunswick* Land Company and above the grants mentioned and reserved therein did pass to the said Company.

"This Court doth further declare with reference to the eighth question that, if what is meant by this question be whether the Minister of Marine and Fisheries could lawfully issue a lease of the bed of the river where it passes through ungranted lands, this Court is of opinion that the said minister could not lawfully issue such lease, but this Court is of opinion that the said minister could lawfully issue a license to fish as a franchise apart from the ownership of the soil in that portion of the river."

Mr. *Lash*, Q.C., for the Crown, moved, pursuant to rule No 231 of the Exchequer Court, rules for an order *nisi* calling upon the suppliant to show cause why the judgment rendered by the Court upon the special case in this matter should not be reviewed and judgment given thereon for the Crown, upon the grounds, that the second question submitted in said special case should have been answered in the affirmative, and that the third, fourth, fifth and sixth questions should have been answered in the negative. This motion was refused.

From this decision the Crown appealed.

Mr. *Lash*, Q. C., for the Crown:

In this appeal the appellant will raise only the main questions involved, viz: whether or not an exclusive right of fishing, at the time the fishing lease was granted to the respondent, previously existed by law in the leased

portion of the river. The reason the 8th question was submitted for the decision of the Exchequer Court was that we thought part of the *locus in quo* was through ungranted land, and it has since been ascertained that no part of the *locus in quo* is through ungranted land.

Had the Minister of Marine and Fisheries power to issue the lease in question?

This depends upon there being no exclusive right of fishing, at the time the lease was made, in the leased portion of the river.

An exclusive right of fishing may exist, 1st in a private river, 2nd in a public river.

The first paragraph of the special case shows what the nature of that portion of the *Miramichi* River is: "It is above tidal waters, and is navigable for canoes and boats, and has been used from the earliest settlement of the country as a highway for the same and for the purpose of floating down timber and logs to market." My contention is shortly this, that in this country the absence of the ebb and flow of the tide does not make a river a private one,—if the contrary is held, then all the great fresh water rivers in *Canada* are private—and that this river, being admitted to be navigable for the purposes of passage and being used as a highway, is a public river, and no exclusive right of fishing exists in it, as no grant or prescription thereof is shown.

2 *Broom & Hadley's* Com. (Edition of 1869) page 107, 2 *Stephens* Com. (1874) pages 670-1-2; 2 *Kerr's* Blackstone (1857) page 39; *Warren* v. *Matthews* (1).

If the *Miramichi* be a private river, it may be admitted that the owner would have the exclusive right of fishing.

Is it a private river? Ebb and flow of the tide is not the proper test: *Lyon* v. *Fishmongers Co.* (2); *Mayor*,

(1) 6 Mod. 73. (2) L. R. 1 H. L. 673

1882

THE QUEEN v. ROBERTSON.

*&c.* v. *Brook* (1); *Carter* v. *Murcot* (2) confirming *Warren* v. *Matthews*; *Genesee Chief* v. *Fitzhugh* (3), confirmed by The *Magnolia* (4), also the reference to *Broom & Hadley & Stephen & Kerr*, above mentioned; *Mayor*, &c. v. *Turner* (5); *Miles* v. *Rose* (6).

The navigable capacity need not continue throughout the whole year: *Olson* v. *Merril* (7).

I do not argue that the bed of the river did not pass, and I can only argue on the assumption that the terms of the special case make the *Miramichi* a highway and a public river, and if so no exclusive right of fishing exists in it: *Thompson's* essay on *Magna Charta* (8); *Mayor*, &c. v. *Brooke* (9); Duke of *Somerset* v. *Fogwell* (10); also references to *Broom & Hadley*, *Stephen & Kerr* above mentioned.

In *England* it is well settled that in a navigable river there can be no exclusive right of fishing unless such right existed prior to *Magna Charta*.

But it is contended by respondent that a navigable river is in law navigable only so far as the tide ebbs and flows, and that though navigable in fact above tide water, it is not navigable in law, and that therefore the incidents attaching to a river navigable in law, do not attach to one navigable only in fact.

The appellant denies this contention, but even if such be law in *England* it is not law in *Canada*, as the size and situation of the two countries are so different.

In *New Brunswick* only so much of the law of *England* as was applicable to the circumstances of the Province when it was first created is in force.

In *England*, where navigation was practically confined to the tidal portion of a river—where in fact navigable

(1) 7 Q. B. 373.
(2) 4 Burr. 2163.
(3) 19 Curt. 233.
(4) 20 How. 296.
(5) 1 Cowp. 86.
(6) 5 Taunt. 705.
(7) 42 Wisc. 203.
(8) Page 203.
(9) 7 Q. B. 382.
(10) 5 B. & C. 884.

water and tide water were synonymous terms, and tide water, with a few small and unimportant exceptions, meant nothing more than public rivers as contra-distinguished from private ones—it was reasonable enough that the ebb and flow of the tide should have been taken as a test of the navigability of a river, as it was the most convenient test, but such a test was and is inapplicable to this country, and was not imported here as part of the Common Law.

Waters here navigable in fact are so regarded in law, without reference to the ebb and flow of the tide, and if a river be navigable in law all the incidents of navigability attach to it, and one of those incidents is the right of the public to fish therein: see *Atty. Gen.* v. *Harrison* (1); *Carson* v. *Blazer* (2); *McManus* v. *Carmichael* (3).

[THE CHIEF JUSTICE:—Is there any objection in holding that a river may be public for certain purposes and private for all other purposes?]

So far as this river is concerned there is none, and where there is no exclusive right to fish, then Parliament can take away the public right by statute, as was done by the Fisheries Act.

The learned counsel also referred to *Robinson & Joseph's Digest, (Ont.) Vo.* "Water;" *People* v. *Canal Appraisers* (4); *Ball* v. *Herbert* (5); *Dixon* v. *Scnetsinger* (6).

Mr. *Weldon*, Q.C., for respondent:

It has to be admitted that according to the English cases the decision of Mr. Justice *Gwynne* must be affirmed. This is practically an appeal from the judgment of the Supreme Court of *New Brunswick*, which has held that this was a private river, and that the

(1) 12 Grant 470.
(2) 2 Binn. 475.
(3) 3 Iowa 52.
(4) 33 Tiff. 461.
(5) 3 Taunt. 267.
(6) 23 U. C. C. P. 235.

1882

THE QUEEN v. ROBERTSON.

license issued by the Minister of Marine and Fisheries of the *locus in quo* is void.

Rivers may be divided into three classes:

I. When they are altogether private, such as shallow streams, not capable to be put to any particular use.

II. When they are private property, but capable of, and subject to, the public use. The case of non-tidal waters.

III. Where the use and property are public, where the tide ebbs and flows.

By the 3rd section of 31 *Victoria*, cap. 60, sec. 2, the power to grant leases is given only where the exclusive right does not already exist by law. It is submitted that the exclusive right did exist in the *New Brunswick* and *Nova Scotia* Land Company, under the grant. The river is clearly within its boundaries, and the exception shows the intention of the Crown to include it in the grant, except where already granted.

In non-tidal rivers, the right of the riparian proprietors extends to the middle of the stream, and where both banks are the property of the same owner, the whole right of property in the stream belongs to him: *Beckett* v. *Morris* (1).

On page 58, Lord *Cranworth* says: "By the Laws of *Scotland*, as by the Law of *England*, when the lands of two continuous properties are separated from each other by a running stream of water, each proprietor is *primâ facie* owner of the soil of the shores or bed of the river *ad medium filum aquæ*."

In navigable rivers or arms of the sea, fishing is common and public. In private rivers, not navigable, it belongs to the lords of the soil on each side: *Carter* v. *Murcott* (2); *Malcolmson* v. *O'Dea* (3); *Marshall* v. *Ulleswater Steam Navigation Company* (4).

(1) L. R. 1 H. L. Sc. 47.
(2) 4 Burr. 2163.
(3) 10 H. L. 593.
(4) 3 B. & S. 732.

1882

THE QUEEN v. ROBERTSON.

The rights of riparian proprietors are very fully discussed in the case of *Lyons* v. *Fishmongers Co.* (1) and *Byron* v. *Stimpson* (2).

The petitioners also rely upon the judgments of the Supreme Court of *New Brunswick* in *Robertson* v. *Steadman* (3), and the cases therein cited.

As to the construction of sea coast and fisheries, see remarks of Lord *Selborne* in *L'Union St. Jacques de Montreal* v. *Belisle* (4).

Even assuming that the land in these rivers is vested in the Crown, it is contended that the Crown only held it in trust for the people of *New Brunswick*.

By the *British North America* Act, secs. 109 and 117, the Crown Lands of the Province of *New Brunswick* are the property, so to speak, of the Province, and therefore the incidents of right appurtenant to the property belong to the Province, otherwise this anomaly would exist, that while the lands were ungranted, the Dominion of *Canada* would have the right to dispose or lease the fishery, but so soon as a grant was made under the great seal of the Province of *New Brunswick*, then it would belong to the grantee.

This point is put forcibly by his Honor Mr. Justice *Fisher*, in the case of *Robertson* v. *Steadman* (5) in his dissenting opinion.

It is submitted, then, that by law, within the limits of the fluvial or angling division described in the lease to the petitioner, the exclusive right of fishing existed, and therefore that the Dominion of *Canada* had not, under the Act of Union, nor under the Act of the Parliament of *Canada* 31 *Vic.* ch. 60, power to grant such lease, and therefore the same became null and void, and the petitioner being damnified has a claim upon the Government for the damage sustained.

(1) 1 App. Cases 562.
(2) 17 New Bruns. R. 697.
(3) 18 New Bruns. R. 530.
(4) L. R. 6 P. C. 37.
(5) 18 New Bruns. R. 621.

1882

THE QUEEN v. ROBERTSON.

Mr. *Lash*, Q. C., in reply.

RITCHIE, C. J. [After reading the statement of the case, proceeded as follows]:

As the lease in question professes to deal only with the right of fishing in that part of the *Miramichi* River described as "the fluvial or angling division of the South-West *Miramichi* River from *Price's Bend* to its source," we are relieved from the necessity of considering in whom the rights of fishing are in the *Miramichi* River from or below *Price's Bend* to its mouth, it being described in the case as being—

After the *St. John* the largest river in *New Brunswick* is the *Miramichi*, flowing northward into an extensive bay of its own name. It is 225 miles in length and seven miles wide at its mouth. It is navigable for large vessels twenty-five miles from the gulf, and for schooners twenty-five miles further to the head of the tide, above which for sixty miles it is navigable for tow-boats. The river has many large tributaries spreading over a great extent of country.

From *Price's Bend* to its source the river is thus described:—

*Price's Bend* is about forty or forty-five miles above the ebb and flow of the tide. The stream for the greater part from this point, upward, is navigable for canoes, small boats, flat-bottomed scows, logs and timber. Logs are usually driven down the river in high water in the spring and fall. The stream is rapid. During summer it is in some places on the bars very shallow. In the salmon fishing season, say June, July and August, canoes have to be hauled over the very shallow bars by hand.

The questions involved in the case submitted, resolve themselves substantially into these:

What are the rights of fishing in a river or a portion of a river such as is that part of the *Miramichi* from *Price's Bend* to its source? Do the rights of property therein belong to the Provincial Government, or their grantees, or to the Dominion Government, or their licensees, or have the Dominion Government, or the Provincial Government, legislative control over such proprie-

tary rights? And is there any distinction between the rights of the grantees from the Provincial Government before confederation or after, and of the Provincial Government itself? That is, assuming the Dominion Government cannot deal with or take away the rights of the grantees of the Crown before confederation, can they do so in respect to the ungranted lands of the provinces granted since confederation? In other words, can the Dominion Parliament authorize the Minister of Marine and Fisheries to issue licenses to parties to fish in rivers such as that described where the lands are ungranted, or where the Provincial Government has before or after confederation granted lands that are bounded on or that extend across such rivers?

It is difficult, if not impossible, satisfactorily to deal with this case and ignore any of these questions, the principles applicable to and governing all being the same, and therefore their determination will consequently answer all the questions submitted and settle this appeal.

The observations I am about to make are designedly confined to rivers such as the *Miramichi* from *Price's Bend* to its source.

In construing the *British North America Act*, I think no hard and fast canon or rule of construction can be laid down and adopted by which all acts passed as well by the Parliament of *Canada* as by the local legislatures upon all and every question that may arise can be effectually tested as to their being or not being *intra vires* of the legislature passing them. The nearest approach to a rule of general application that has occurred to me for reconciling the apparently conflicting legislative powers under the *British North America Act*, is what I suggested in the cases of *Valin* v. *Langlois* (1) and *The Citizen's Insurance Co.* v. *Parsons* (2), with respect

(1) 3 Can. Sup. C. R. 15. (2) 4 Can. Sup. C. R. 242.

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

to property and civil rights, over which exclusive legislative authority is given to the local legislatures: that, as there are many matters involving property and civil rights expressly reserved to the Dominion Parliament, the power of the local legislatures must, to a certain extent, be subject to the general and special legislative powers of the Dominion Parliament. But while the legislative rights of the local legislatures are in this sense subordinate to the rights of the Dominion Parliament, I think such latter rights must be exercised so far as may be consistently with the rights of the local legislatures, and therefore the Dominion Parliament would only have the right to interfere with property and civil rights in so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of *Canada*. And this view I think was clearly in the mind of the Privy Council when in *Cushing* v. *Dupuy*(1), in speaking of the powers of the dominion and provincial legislatures, it is said in the judgment of the Privy Council by Sir *M. E. Smith*:—

> It is therefore to be presumed, indeed it is a necessary implication, that the Imperial statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights and procedure within the provinces, *so far as a general law relating to those subjects might affect them.*

And this view is, I venture to think, substantially indorsed by the Privy Council in the case of *Parsons* v. *The Citizen's Insurance Co*, decided in November last. There the Privy Council say as to the provisions of the *British North America Act*, 1867, relating to the distribution of legislative powers between the Parliament of *Canada* and the legislatures of the provinces, that owing to the very general language in which

(1) 5 App. Cases, 415.

some of these powers are described, the question is one of considerable difficulty; and after referring to the first branch of section 91, the Privy Council say:

An endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the 91st section, for greater certainty, but not so to restrict the generality of the foregoing terms of the section, that (notwithstanding anything in the Act) the exclusive legislative authority of the Parliament of *Canada* should extend to all matters coming within the classes of subjects enumerated in that section. With the same object, apparently, the paragraph at the end of sec. 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of sec. 92. Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, *it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament.*

And then we find language which I humbly think sanctions to its fullest extent the principle I have heretofore ventured to promulgate as applicable to the interpretation of the *British North America Act* in this admittedly most difficult question:

With regard to certain classes of subjects, therefore generally described in sec. 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the provinces. In these cases it is the duty of the courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exist in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and in order to prevent such a result, the language of the two sections must be read together, and that of one interpreted, and, where necessary, modified by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the section, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.

And saying they find no sufficient reason in the language itself, nor in the other parts of the act, for giving so narrow an interpretation to the words "civil rights," and that the words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in any of the enumerated classes of subjects in section 91, they add this important proposition bearing on the case in hand as applicable to "Property and Civil Rights":

> It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intendment be modified and limited.

After referring to the 14 *Geo.* III., ch. 83, which made provision for the government of the Province of *Quebec*, and by section 8 of which it was enacted, that His Majesty's Canadian subjects within the Province of *Quebec* should enjoy their property, usages and other civil rights as they had before done, and that in all matters of controversy relative to property and civil rights resort should be had to the laws of *Canada*, and be determined agreeably to the said laws, they say:

> In this statute the words "property" and "civil rights" are plainly used in their largest sense, and there is no reason for holding that in the statute under discussion they are used in a different and narrower one.

And after instancing the subject of marriage and divorce in section 91, and observing "it is evident that the solemnization of marriage would have come within this general description, yet 'solemnization of marriage in the Province' is enumerated among the classes of subjects in section 92;" the Privy Council say:

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

No one can doubt, notwithstanding the general language of section 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So "the raising of money by any mode or system of taxation" is enumerated among the classes of subjects in section 91, but though the description is sufficiently large and general to include direct taxation within the province, in order to the raising of a revenue for provincial purposes," assigned to the provincial legislatures by section 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one.

Let us now refer to the sections of the *British North America Act* bearing on the present case, and guided by considerations such as these, I think the act can be so read as to avoid all conflict and give to each legislative body the full legislative and proprietary rights intended to be conferred by the Imperial Parliament.

By section 91, sub-section 12, is confided to the legislative authority of the Dominion Parliament, "Sea coast and Inland Fisheries;" to the exclusive power of the provincial legislatures by section 92, sub-section 13, "Property and civil rights in the provinces;" and, by sub-section 16, "Generally all matters of a merely local or private nature in the provinces;" and by section 108 certain public works and property specified in schedule 3 are declared to be the property of *Canada;* and by section 109, "All lands, mines, minerals and royalties belonging to the several provinces shall belong to the several provinces in which they are situate, subject to any trusts existing in respect thereof and to any interest other than that of the province in the same;" and by section 92, sub-section 5, the exclusive power of legislation is conferred on the provincial legislatures in relation to "the management and sale of the public lands belonging to the province and of the timber and wood thereon."

I am of opinion that the *Miramichi*, from *Price's Bend* to its source, is not a public river on which the

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

public have a right to fish, and though the public may have an easement or right to float rafts or logs down, and a right of passage up and down in canoes, &c., in times of freshet in the spring and autumn, or whenever the water is sufficiently high to enable the river to be so used, I am equally of opinion that such a right is not in the slightest degree inconsistent with an exclusive right of fishing, or with the rights of the owners of property opposite their respective lands *ad medium filum aquæ* ; or, when the lands on each side of the river belong to the same person, the same exclusive right of fishing in the whole river so far as his land extends along the same. There is no connection whatever between a right of passage and a right of fishing. A right of passage is an easement, that is to say, a privilege without profit, as in a common highway. A right to catch fish is a profit *à prendre*, subject, no doubt, to the free use of the river as a highway and to the private rights of others. This right of private property in rivers such as that portion of the *Miramichi* we are dealing with has always been recognized at common law.

In *Hudson* v. *MacRae* (1), an information before two justices for unlawfully and wilfully attempting to take fish in water where another person had a right of private fishing, the accused justified under a supposed right on the part of the public to fish in that water.

It was conceded such a right of fishing by the public in a non-navigable river could not exist in law, and that accused, justifying himself under the *bonâ fide*, though mistaken notion, of such a right, did not make such a claim of right as ousted the jurisdiction of the justices.

*Blackburn*, J., says :—

It appears that the appellant was fishing in a private river with every circumstance necessary to warrant conviction, but he showed

(1) 4 B. and S. 585.

in his defence that for many years the public at large fished there under the notion of a right. The justices have found that he acted under the *bonâ fide* belief in that right, *but then in point of law* such a right could not be obtained in a non-navigable river.

If the title to property comes in question, the justices must hold their hands.

Ritchie, C.J.

*Blackburn*, J., says:—

But when the claim set up is of a right which could by no possibility exist, it cannot be said that the right of property comes in question; there is then nothing more than this, that the man has got in his head an unfounded notion of a right impossible in law * * * Here is a non-navigable river where the public could not possibly have a right of fishing.

*Race* v. *Ward* (1), declaration for breaking and entering plaintiff's close and committing trespass. Defendant justified under an immemorial custom for all inhabitants for the time being of said township to have liberty and privilege to have and take water from certain spring in said close, &c.

Lord *Campbell*, C. J., says:—

In *Wickham* v. *Hawker* (2) the Court of Exchequer held that "a liberty, with servants or otherwise, to come into and upon lands, and there to hawk, hunt, fish and fowl," is a profit *à prendre* within the prescription Act (3).

* * * * *

We held, last term, that to a declaration for breaking and entering the plaintiff's close and taking his fish, a custom pleaded for all the parish to angle and catch fish in the *locus in quo*, was bad, as this was a profit *à prendre*, and might lead to the destruction of the subject-matter to which the alleged custom applied.

Case referred to was *Bland* v. *Lipscombe*, 4 E. and B. 713 note.

Lord *Campbell*, C. J.:—

We must act upon that salutary law which distinguishes between a mere easement and the right to take a profit.

* * * * *

It is clear to me that the custom claimed in this plea is to angle for, catch, and carry away the fish; but, supposing it were limited,

(1) 4 E. and B. 702. (2) 7 M. and W. 63.
(3) 2 and 3 Wm. 4, 71.

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

as Mr. *Brown* argues, to a claim to angle for and catch the fish without claiming a right to carry them away, I think it would be equally destructive of the subject-matter, and bad.

*Musseit* v. *Burch* (1) decides that the right of the public to fish in a non-tidal river which is made navigable by locks cannot exist in law.

*Cleaseby*, B., says:

Now it appears to me, that the case in the Irish reports (*Murphy* v. *Ryan*) is decisive on the point before us. It expressly decides that "the public cannot acquire by immemorial usage any right of fishing in a river in which, though it be navigable, the tide does not ebb and flow."

*Grove*, J.:—

Mr. *Graham* has not shown us any case in which the public have been held to have a right of fishing in a river merely because it is navigated by boats.

In *Wishart* v. *Wyllie* (2), the Lord Chancellor laid it down that the law on this subject admitted of no doubt.

If, said his lordship, a stream separates properties A and B, *primâ facie*, the owner of the land A, as to his land, on one side, and the owner of the land B, as to his land, on the other, are each entitled to the soil of the stream, *usque ad mediam aquæ*, that is *primâ facie* so. It may be rebutted, but, generally speaking, an imaginary line running through the middle of the stream is the boundary; just as if a road separates two properties, the ownership of the road belongs half-way to one and half-way to the other. It may be rebutted by circumstances, but if not rebutted, that is the legal presumption. Then, if two properties are divided by a river, the boundary is an imaginary line in the middle of that river; but to say that the whole of the river is a sort of common property, which belongs to no one, is not a correct view of the case.

In *Murphy* v. *Ryan* (3), *O'Hagan*, C. J., said:

According to the well established principles of the common law, the proprietors one either side of a river are presumed to be possessed of the bed and soil of it moietively, to a supposed line in the middle, constituting their legal boundary; and, being so possessed, have an

(1) 35 L. N. S. 486.
(2) 1 Macq. H. L. Cas. 389.
(3) Ir. R. 2. C. L. 143.

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

exclusive right to the fishery in the water which flows about their respective territories, though the law secures to the community the right of navigation upon the surface of that water as a public highway, which individuals are forbidden to obstruct, and precludes the riparian proprietors from preventing the progress of the fish through the river, or dealing with the water to the injury of their neighbours.

* * * * * * * * * *

But, whilst the right of fishing in fresh water rivers, in which the soil belongs to the riparian owners, is thus exclusive, the right of fishing in the sea, and in its arms and estuaries, and in its tidal waters, wherever it ebbs and flows, is held by the common law to be *publici juris*, and to belong to all the subjects of the crown—the soil of the sea and its arms and estuaries and tidal waters being vested in the sovereign as a trustee for the public. The exclusive right of fishing in the one case and the public right of fishing in the other depend upon the existence of a proprietorship in the soil of the private river by the private owner, and by the sovereign in the public river respectively.

* * * * * * * * * *

Upon a full consideration of all the cases, it will, I think, appear that no river has been ever held navigable, so as to vest in the Crown its bed and soil, and in the public the right of fishing, merely because it has been used as a general highway for the purpose of navigation; and that, beyond the point to which the sea ebbs and flows, even in a river so used for public purposes, the soil is *primâ facie* in the riparian owners, and the right of fishing private.

* * * * * * * * * *

But no usage can establish a right to take a profit in another's soil, which might involve the destruction of his property; and such a profit would be the taking of fish. The precise point is decided both as to the general law and the particular case of profit by fishing in *Bland* v. *Lipscombe* (1); and the principle of that case, in affirmation of the ancient doctrine, is sustained by the judgments in *Lloyd* v. *Jones* (2); *Race* v. *Ward* (3); *Hudson* v. *MacRae* (4); and other recent decisions. That principle is beyond controversy; and, therefore, the usage relied on in this defence cannot sustain the claim of the right in the public to fish in a river, the soil of which is not *publici juris*, but private property.

In *Lyon* v. *Fishmonger Co.* (5) Lord *Cairns* says:

The late Lord *Wensleydale* observed, in this House, in the case of *Chasemore* v. *Richards* (5) "The subject of right to streams of water

(1) 4 E. & B. 713, note.
(2) 6 C. B. 81.
(3) 4 E. & B. 702.
(4) 4 B. & S. 585.
(5) 1 App. Cases 673.
(6) 7 H. L. C. 382.

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

flowing on the surface has been of late years fully discussed, and by a series of carefully considered judgments placed upon a clear and satisfactory footing."

And he then cites the language of the late Lord *Wensleydale* as quoted by *O'Hagan*.

In *Marshall* v. *Ulleswater Steam Navigation Co.* (1), it was held that "the allegation of a several fishery, *primâ facie*, imports ownership of the soil;" per *Wightman* and *Mellor*, J. J., *Cochrane*, C. J., dissenting, but not holding the court (Q B) bound by the authorities to that effect,

*Wightman*, J., delivering judgment, referring to *Holford* v. *Bailey* (2), says:—

> These decisions are in conformity with the rule stated in the late editions of *Blackstone's* Commentaries, vol. 2, p. 39. He that has a several fishery must also be (or at least derive his right from) the owner of the soil.

*Cockburn*, C. J., says:—

> The use of water for the purpose of fishing is, when the fishery is united with the ownership of the soil, a right incidental and accessory to the latter. On a grant of the land, the water and the incidental and accessory right of fishing would necessarily pass with it.

Previous to confederation many enactments were passed by the legislature of *New Brunswick* for the general regulation and protection of the fisheries in that province, but no act, I will undertake with confidence to assert, can be found in the statute books of *New Brunswick*, from the date of the erection of the province to the day of confederation, taking away or interfering with (except as such general regulations might interfere with) the private rights of the individual proprietors of lands through which such rivers run, still less to take from them the enjoyment of their rights of fishing and to authorize the leasing of the same to others to the exclusion of the owner. But the legislature did authorize the Governor-in-Council to

(1) 3 B. & S. 732; affirmed 6 B. & S. 570.

(2) 13 Jur. 278; 13 Q. B. 426; 18 L. J. Q. B. 109.

grant leases or licenses for fishing purposes in rivers and streams above the tidal waters of such streams or rivers when the same belonged to the Crown or the lands were ungranted, but the provincial legislature, having a just regard for private rights, specially provided that the rights of parties in lands and privileges already granted should not be affected thereby, recognizing the rights of individuals in the fisheries in rivers above tidal waters and the right of the province to the fisheries in rivers through the ungranted lands of the province. The reason why there was any legislation on this matter of leasing (for the executive government might have granted such leases without legislative authority) is to be found on the face of the act, viz., to regulate the sale and provide for the disposal of the proceeds, by enacting that such leases or licenses to be issued by the Governor in Council should be sold by public auction after 30 days' notice in the *Royal Gazette*, an upset price being determined by the Governor in Council, and that the rents and profits accruing from such leases or licenses should be paid into the provincial treasury to a separate account to be kept, called "The Fishery Protection Account."

Such being the state of matters at the time of confederation, I am of opinion that the legislature in regard to "Inland and Sea Fisheries" contemplated by the *British North America Act* was not in reference to "property and civil rights"—that is to say, not as to the ownership of the beds of the rivers, or of the fisheries or the rights of individuals therein, but to subjects affecting the fisheries generally, tending to their regulation, protection and preservation, matters of a natural and general concern and important to the public, such as the forbidding fish to be taken at improper seasons in an improper manner, or with destructive instruments, laws with reference to the

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

improvement and increase of the fisheries; in other words, all such general laws as enure as well to the benefit of the owners of the fisheries as to the public at large, who are interested in the fisheries as a source of national or provincial wealth; in other words, laws in relation to the fisheries, such as those which the local legislatures were, previously to and at the time of confederation, in the habit of enacting for their regulation, preservation and protection, with which the property in the fish or the right to take the fish out of the water to be appropriated to the party so taking the fish has nothing whatever to do, the property in the fishing, or the right to take the fish, being as much the property of the province or the individual, as the dry land or the land covered with water. I cannot discover the slightest trace of an intention on the part of the Imperial Parliament to convey to the Dominion Government any property in the beds of streams or in the fisheries incident to the ownership thereof, whether belonging at the date of confederation either to the provinces or individuals, or to confer on the Dominion Parliament the right to appropriate or dispose of them, and receive therefor large rentals which most unequivocally proceed from property, or from the incidents of property in or to which the Dominion has no shadow of claim; but, on the contrary, I find all the property it was intended to vest in the Dominion specifically set forth. Nor can I discover the most remote indication of an intent to deprive either the provinces or the individuals of their proprietary rights in their respective properties; or, in other words, that it was intended that the lands and their incidents should be separated and the lands continue to belong to the provinces and the crown grantees, and the incidental right of fishing should belong to the Dominion, or be at its disposal. I am at a loss to understand how the Dominion, which never owned the land,

and therefore never had any right to the fishing as incidental to such ownership, without any grant, statutory or otherwise, without a word in the statute indicating the slighest intention to vest the rights of property or of fishing in the Dominion, without a word qualifying or limiting the right of property of the provinces in the public lands, can now successfully claim to have a beneficial interest in those fisheries, and authority to deal with such rights of fishing as the property of the Dominion, and claim to rent or license the same at large yearly rents and appropriate the proceeds to Dominion purposes. I had formerly occasion to point out that the public works and property of each province which it was intended should be the property of *Canada* were enumerated in the 3rd schedule, and that neither by express words nor by the most forced construction, could the slightest inference be drawn that the public lands of the provinces, or their incidents, were intended to be vested in the Dominion, and that the express words of section 117 as clearly and unequivocally established that the provinces were to retain all their respective public property not otherwise disposed of by the act, and that, as if to place the question beyond a peradventure, section 109 provided that all lands, mines, &c., belonging to the several provinces in which the same are situate or arise, subject to any trusts existing in respect thereof and to any interest other than that of the province in the same.

I reiterate what I on a former occasion intimated, that at the time of the union the entire control, management and disposition of the Crown lands, and the proceeds of the public domain, were confided to the executive administration of the provincial governments as representing the Crown for the benefit of the provinces respectively, and to the legislative actions of the provincial legislatures, so that the Crown lands, though standing in the

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

name of the Queen, were, with their accessories and incidents, to all intents and purposes the public property of the respective provinces in which they were situate; and this property, the Imperial Act, by clear unambiguous language, has, as we have seen, declared shall after confederation continue to be the property of the provinces; and I cannot discover any intention to take from provincial legislatures all legislative power over property and civil rights in fisheries, such as we are now dealing with, and so give to the parliament of *Canada* the right to deprive the province or individuals of their right of property therein, and to transfer the same or the enjoyment thereof to others, as the license in question affects to do.

To all general laws passed by the dominion of *Canada* regulating "sea coast and inland fisheries" all must submit, but such laws must not conflict or compete with the legislative power of the local legislatures over property and civil rights beyond what may be necessary for legislating generally and effectually for the regulation, protection and preservation of the fisheries in the interests of the public at large. Therefore, while the local legislatures have no right to pass any laws interfering with the regulation and protection of the fisheries, as they might have passed before confederation, they, in my opinion, clearly have a right to pass any laws affecting the property in those fisheries, or the transfer or transmission of such property under the power conferred on them to deal with property and civil rights in the province, inasmuch as such laws need have no connection or interference with the right of the Dominion parliament to deal with the regulation and protection of the fisheries, a matter wholly separate and distinct from the property in the fisheries. By which means the general jurisdiction over the fisheries is secured to the parliament of the Dominion, whereby they are

enabled to pass all laws necessary for their preservation and protection, this being the only matter of general public interest in which the whole Dominion is interested in connection with river fisheries in fresh water, non-tidal rivers or streams, such as that now being considered, while at the same time exclusive jurisdiction over property and civil rights in such fisheries is preserved to the provincial legislatures, thus satisfactorily, to my mind, reconciling the powers of both legislatures without infringing on either.

As a necessary consequence of what I have said, the Minister of Marine and Fisheries has no authority to issue a lease of the bed of such a river as this where it passes either through ungranted or granted lands, and I have an equally strong opinion that the Dominion parliament has no legislative power or authority to authorize him to issue, as against the owner, a license to fish as a franchise or right apart from the ownership of the soil, whether owned by the province or an individual. I am at a loss to conceive how it is possible for the minister to have that power over lands owned by the province and not have the same power over lands owned by private individuals; the franchise or right is in the private individual by virtue of his property in the bed of the stream, and this he obtains by virtue of the grant from the general government, why then should the province not have the same franchise or right by virtue of its property in the soil, bank and bed of the river?

Unquestionably the right of fishing may be in one person and the property in the bank and soil of a river in another, but can there be a doubt that if a man owning land on the bank of a river, with right to the bed of the river extending to the centre of a stream opposite such land, conveys without reservation or exception the land bounded by the stream, that the

1882

THE QUEEN v. ROBERTSON.

Ritchie, C.J.

right of fishing goes with it? But what is there in the *British North America Act* to give the slighest countenance to the idea that any such separation of the right to lands and to the fishery incidental to the land was contemplated, and that while the public lands were retained to the provinces, rights of fishing connected therewith and incident thereto were to become separate and distinct, the one from the other, and the fishing taken from the provinces and transferred to the Dominion?

Can it be disputed that, under the 109th section, the banks and beds of all such ungranted rivers and streams belong to the several provinces? Where then do we get any language severing the right to the fisheries from the property or title to the soil or bed of these rivers, or altering in any way the title or ownership of the lands, including the banks and beds of rivers passing through them, or any of the rights incident to the same?

I think Mr. Justice *Fisher* in *Steadman* v. *Robertson* (1) took a correct view of the law. I have arrived at like conclusions, viz.: that it was not the intention of *The British North America Act*, 1867, to give the parliament of *Canada* any greater power than had been previously exercised by the separate legislatures of the provinces; that is the general power for the regulation and protection of the fisheries; that the act of the parliament of *Canada*, 31 *Vic.*, c. 60, recognises that view, and while it provides for the regulation and protection of the fisheries, it does not interfere with existing exclusive rights of fishing, whether provincial or private, but only authorizes the granting of leases where the property and therefore the right of fishing thereto belongs to the Dominion, or where such rights do not already exist by law; that the exclusive right

(1) 2 Pugs. & Bur. 599.

of fishing in rivers such as the *Miramichi* at *Price's Bend* and from thence to its source, as described in the case, exist by law in the provincial government of *New Brunswick* or its grantees; that any lease granted by the Minister of Marine and Fisheries, to fish in such fresh water non-tidal rivers, which are not the property of the Dominion, or in which the soil is not in the Dominion, is illegal; that where the exclusive right to fish has been acquired as incident to a grant of the land through which such river flows, there is no authority given by the Canadian act to grant a right to fish, and the Dominion parliament has no right to give such authority; and also that the ungranted lands in the province of *New Brunswick*, being in the crown for the benefit of the people of *New Brunswick*, the exclusive right to fish follows as an incident, and is in the crown as trustee for the benefit of the people of the province, exclusively, and therefore a license by the Minister of Marine and Fisheries to fish in streams running through provincial property or private lands is illegal, and consequently the lease or license issued to the suppliant is null and void.

STRONG, J.:—

The fishery license granted to the respondent contains no covenant for title or warranty on the part of the Crown, and, therefore, upon no principle of law which has been suggested, or that I can discover, could the Crown be made liable to indemnify the respondent in the case of eviction. In my opinion the appeal ought to be decided upon this ground, for I do not think the court ought to entertain the special case upon the submission of the Attorney General for the Crown to indemnify the respondent, if the court should be of opinion against the Crown on what, so far as the interest of the respondent is concerned, is a purely specu-

1882

THE QUEEN v. ROBERTSON.

Strong, J.

lative question stated for the opinion of the court. In the case of private suitors, if a special case appears to be framed for the purpose of eliciting an opinion upon a question, the decision of which is not essential to determine the rights of the parties, the court will refuse to entertain it (1), and I see no reason why the same rule should not be applied to a case in which the Crown is a party. As the case is presented to the court it appears that the officers of the Crown have arranged to pay the suppliant, not damages, but a gratuity, in the event of the court being of the opinion that the Crown had no authority to grant the license in question. This is to invoke an advisory not a contentious jurisdiction, and such a jurisdiction ought not to be exercised unless conferred by statute, which has not been done.

As, however, the other members of the court take a different view on this point, I yield to their judgment, and proceed to express the opinion at which I have arrived on the points which have been argued.

Thus dealing with the case, I think the appeal should be dismissed, but though I arrive at this conclusion, I am not prepared to coincide in all the reasons stated in the judgment delivered in the court below.

I have no difficulty in agreeing in the judgment of Mr. Justice *Gwynne*, so far as it determines that by the true construction of the exception contained in the letters patent of the 5th November, 1835, by which the Crown granted the lands belonging on the river *Miramichi*, including the limits to which the respondents license extended, that exception did not comprise the whole bed of the river *Miramichi*, but only so much of it as adjoined lands which the Crown had previously granted, and which lands are also excepted from the operation of the grant.

(1) Doe *v.* Duntze, 6 C. B. 100.

1882

THE QUEEN v. ROBERTSON.

Strong, J.

The exception in question is thus expressed:

And also further excepting the bed and waters of the *Miramichi* river and the beds and waters of all the rivers and streams which empty themselves into the *St. John* or the river *Nashwaak* so far up the said rivers and streams respectively as the same respectively pass through or over any of the said heretofore previously granted pieces or parcels of land hereinbefore excepted.

I cannot conceive what language could have been adopted more plainly expressing an intention to except the portions of the bed adjacent to lands already granted and such portions only. The object of the Crown clearly was to protect the rights of its earlier grantees, an object which would be equally applicable to grantees of lands lying on the *Miramichi*, as to those of lands on the other rivers named. Therefore whilst, on the one hand, neither the words of the instrument itself, nor the plain reason of thus restricting its operation, call for the construction contended for by the Crown, that the whole bed of the *Miramichi* was reserved, on the other hand, there is nothing to give the slightest colour to the argument said to have been advanced in the court below on behalf of the respondent, that the exception itself did not apply to the *Miramichi* but only to the other rivers. Indeed, before this court, neither of the learned counsel who argued the case for the Crown and the respondent urged these contentions.

Then, it does not appear, from the statements of the case, that any portion of the bed of the river comprised in the fishery limits granted by the license, viz.: from *Price's Bend* to its source, had been granted at a date earlier than that of the letters patent to the *Nova Scotia* and *New Brunswick* Land Company. The question next arises what, upon this construction and the state of facts just mentioned, was the effect of the grant upon the property in the bed of the river, did it pass under the grant to the land company, or was it reserved to the Crown?

1882

THE QUEEN v. ROBERTSON.

Strong, J.

The river *Miramichi*, between the two points indicated, *Price's Bend* and the source, is, upon the facts admitted in the case, beyond all question not a navigable or public river.

The navigable capacity of this portion of the river is thus described in the case :

> That portion of the *Miramichi* river which is covered by fishery lease to suppliant is above tidal waters, and is navigable for canoes and boats, and has been used from the earliest settlement of the country as a highway for the same, and for the purpose of floating down timber and logs to market. After the *St. John*, the largest river in *New Brunswick* is the *Miramichi*, floating northward into an extensive bay of its own name. It is 225 miles in length and 7 miles wide at its mouth. It is navigable for large vessels 25 miles from the gulf, and for schooners 25 miles further to the head of the tide, above which, for 60 miles, it is navigable for row boats. The river has many large tributaries extending over a great extent of country. *Price's Bend* is about 40 or 45 miles above the ebb and flow of the tide. The stream for the greater part from this point upward is navigable for canoes, small boats, flat-bottomed scows, logs and timber. Logs are usually floated down the river in high water, in the spring and fall The stream is rapid. During summer it is in some places on the bars very shallow. In the salmon fishing, say, June, July and August, canoes have to be hauled over the very shallow bars by hand.

This description is that of a river non-navigable, and consequently what is called a private river as regards that portion of it above *Price's Bend.* Whilst I do not hesitate to say that the rule which appears to have been adopted as a principle of the common law as administered in *England*, that no rivers are to be considered in law as public and navigable above the ebb and flow of the tide, is not applicable to the great rivers of this continent, as has been determined by the Supreme Court of the *United States* and by the courts of most of the States, and whilst I think that with us the sole test of the navigable and public character of such streams is their capacity for such uses, I am still not prepared to accede to the argument of Mr. *Lash* that a

river navigable in any part of its course is to be considered in law as navigable from its source. No authority can be produced for such a proposition, and the books are full of instances in which rivers navigable and public in their lower course have been held to be private and non-navigable in the upper part of the stream. In the case of *Murphy* v. *Ryan* (1,) we have indeed an instance in which this was expressly determined to be the case. Then, the admitted statement contained in the case shows beyond all ground of cavil that in point of fact the portion of the river *Miramichi* in question is not in fact navigable, for, to say that a stream in which the most lightly constructed vessels used upon our waters require to be hauled over shallows and bars is a navigable river, would be a contradiction in terms and calls for no observation.

Then, no principle of law can be better established both in *England* and *America* than the rule which ascribes the ownership of the soil and bed of a non-navigable river *primâ facie* to riparian proprietors of the opposite banks, each to the middle thread of the stream. To cite authorities for this universally recognized principle would be a useless waste of time. It is true that this is but a *primâ facie* presumption, but this being so, in the present case there is not only nothing to rebut the presumption, but, on the contrary, it is greatly strengthened and made almost conclusive by the exception before adverted to, contained in the letters patent, reserving the soil or bed appurtenant to the lands of riparian owners holding under former grants from the Crown.

It results from the proprietorship of the riparian owner of the soil in the bed of the river that he has the exclusive right of fishing in so much of the bed of the river as belongs to him, and this is not a riparian

(1) Ir. R. 2 C. L. 143.

1882

THE QUEEN v. ROBERTSON.

Strong, J.

right in the nature of an easement, but is strictly a right of property. To sustain these propositions of law authorities without number might be cited, it is sufficient for the present purpose to refer to two or three of the most weighty and apposite. Sir *Matthew Hale* says in the Treatise *de Jure Maris*:

> Fresh rivers of what kind soever do of common right belong to the owners of the soil adjacent, so that the owners of one side have of common right the property of the soil, and consequently the right of fishing *usque filum aquæ*, and the owners on the other side the right of soil or ownership and fishing unto the *filum aquæ* on their side. And if a man be owner of the land of both sides, in common presumption he is owner of the whole river, and hath the right of fishing according to the extent of his land in length; with this agrees common experience.

Chancellor *Kent* in his commentaries (1) states the law as follows:

> But grants of land bounded on rivers or upon the margin of the same, or along the same above tide-water, carry the exclusive right and title of the grantee to the centre of the stream, unless the terms of the grant clearly denote the intention to stop at the edge or margin of the river; and the public, in the case where the river is navigable for boats and rafts, have an easement thereon or a right of passage subject to the *jus publicum* as a common public highway.

I may say in passing that, although Chancellor *Kent* undoubtedly states the law as determined both by the older and more recent authorities applicable to private rivers such as the present, it may be doubted whether his doctrine is equally applicable to large navigable fresh water rivers, above the flow of the tide, not only where such rivers form international boundaries, as in the instance of the *St. Lawrence*, but in cases where their whole course is comprised within the same State or Province. Recent decisions in the learned Chancellor's own State (*New York*) seem to indicate that the beds of such large navigable rivers are, by the common law, vested in the State as a trustee for the public,

(1) Vol. 3, p. 427, ed. 12.

and are alienable without legislative authority, and do not therefore pass *ad medium filum aquæ* to the riparian owners, and that the right of fishing in such rivers is public, as in the sea and the other large inland lakes of the continent. It is unnecessary for the purpose of the present case to decide this question, and I have only alluded to it to prevent any misapprehension hereafter, should the point itself arise for decision. It is sufficient for the present purpose that the passage from the commentaries applies to non-navigable rivers, and gives us the law governing such streams as those we are now dealing with To the authorities on this head already quoted, may be added that of Lord *O'Hagan*, lately Lord Chancellor of *Ireland*, who, when a Judge of the Irish Court of Common Pleas, in giving judgment in the case of *Murphy* v. *Ryan*, already referred to, thus distinctly affirms the doctrine of Sir *Matthew Hale ;* he says :

> According to the well-established principles of the common law the proprietors on either side of the river are presumed to be possessed of the bed and soil of it moietively to a supposed line in the middle, constituting the legal boundary, and being so possessed have an exclusive right to the fishery in the water which flows along their respective territories.

From a treatise on the law of waters lately published by Messrs. *Coulson & Forbes*, I extract the following passage :

> In all rivers and streams above the flow and re-flow of the tide, whether such rivers are navigable or not, the proprietors of the land abutting on the streams are *primâ facie* the owners of the soil of the alveus or channel *ad medium filum aquæ*, and as such have *primâ facie* the right of fishing in front of their own lands. The right is a right of property, one of the profits of the land, and has been called a *territorial fishery*. It is not strictly speaking a riparian right arising from the right of access to the water, but is a profit of the land over which the water flows, and as such may be transferred or appropriated, either with or without the property in the bed or

1882

THE QUEEN v. ROBERTSON.

Strong, J.

banks, to another person, whether he has land or not on the borders of or adjacent to the stream (1).

Applying the law as thus stated to the facts stated in the special case submitted for the opinion of the court, we must determine that at the time of the passing of the *British North America Act*, the soil or bed of the river *Miramichi* between *Price's Bend* and its source was vested in the *New Brunswick* and *Nova Scotia* land company, or its grantees, to whom consequently also belonged, and that as a right of property, and not as an easement or franchise, the absolute and exclusive right of fishing within the same limits.

The question next presents itself, did the *British North America Act* either directly affect these vested rights of property, or did it authorize parliament to interfere with them by legislation? There is no pretence for saying that the act contains anything in the slightest degree derogating from the rights of fishing belonging to the proprietors of the beds of non-navigable rivers. By the 13th enumeration of the 92nd section the exclusive right to legislate concerning property is conferred upon the local legislatures, to whom also by the 16th sub-sec. are granted similar powers concerning matters of a local and private nature. These provisions must necessarily exclude the right of the parliament of the Dominion to legislate to the prejudice of the rights of fishing vested in the proprietors of beds of rivers and streams, unless we can find in section 91, defining the powers of Parliament, some exception to the general effect of the words "property" as including such a proprietary right. The only words in the last mentioned section which it can be suggested may have such an operation are those of the 12th enumeration "Sea coast and inland fisheries." It is a sound and

(1) See also *Marshall* v. *Ulleswater Co.*, 3 B. & S. 732; *Bristow* v. *Cormican*, 3 App. Cases 641.

1882

THE QUEEN v. ROBERTSON.

Strong, J.

well recognized maxim of construction that in the interpretation of statutes we are to assume nothing calculated to impair private rights of ownership, unless compelled to do so by express words or necessary implication. This principle has within the last few months been applied with much approval by the Privy Council, in the case of the *Western Counties Railway Co.* v. *The Windsor & Annapolis Railway Co.*, and is too well fixed as a canon of construction to be open to the least doubt or question. As observed in the judgment of the Privy Council in the case just mentioned, the only difficulty which ever arises respecting it is in its application to particular enactments. I think there is room for applying an analogous principle in the present case. Although the provision in question does not in itself make any disposition of the fisheries mentioned, but is merely facultative, empowering Parliament to make laws respecting the subjects named, we are not to assume, without express words or unavoidable implication, that it was the intention of the Imperial legislature to confer upon parliament the power to encroach upon private and local rights of property which by other sections of the Act have been especially confided to the protection and disposition of another legislature. I am of opinion, therefore, that the thirteenth enumeration of section 91, by the single expression "Inland Fisheries," conferred upon parliament no power of taking away exclusive rights of fishery vested in the private proprietors of non-navigable rivers, and that such exclusive rights, being in every sense of the word "property," can only be interfered with by the provincial legislatures in exercise of the powers given them by the provision of section 92 before referred to. This does not by any means leave the sub-clause referred to in section 91 without effect, for it may well be considered as authorizing parliament

1882

THE QUEEN v. ROBERTSON.

Strong, J.

to pass laws for the regulation and conservation of all fisheries, inland as well as sea coast, by enacting, for instance, in order that protection may be afforded whilst breeding, prohibiting obstructions in ascending rivers from the sea; preventing the undue destruction of fish by taking them in a particular manner or with forbidden engines, and in many other ways providing for what may be called the police of the fisheries. Again, under this provision parliament may enact laws for regulating and restricting the right of fishing in the waters belonging to the Dominion, such as public harbors, the beds of which have been lately determined by this court to be vested in the Crown in right of the Dominion, and also for regulating the public inland fisheries of the Dominion, such as those of the great lakes and possibly also those of navigable non-tidal rivers. There is therefore no unreasonable restriction of the power of parliament in construing the twelfth sub-section as I do, as not including a power to legislate concerning the right of property in private fisheries.

I am so far of accord with the learned judge whose judgment is the subject of appeal. I am compelled, however, to differ from him when he makes a difference between the rights of private owners which had been acquired by grant from the Crown before confederation and the rights of the provincial governments in respect of fisheries in non-navigable rivers, the beds of which, not having been granted, were vested in the provinces at that date. I can see no reason for such a distinction. By the *British North America Act*, the Crown lands are vested in the respective provinces. This, of course, includes the beds of all non-navigable rivers and the consequent right to the fish in such waters, for there can be no doubt that the right of taking fish in rivers of this class, so long as they remain ungranted, is vested in the

1882

THE QUEEN v. ROBERTSON.

Strong, J.

provinces as an incident of the ownership of the public domain, just as the timber and all the other profits of the land are so vested. These fisheries, although often in practice not conserved by the provinces, are certainly not public fisheries open of common right to all who may choose to avail themselves of them, as is the case with regard to the fisheries in tidal waters and the great lakes, but the provincial governments may, without special legislation and in exercise of their right of property, restrict their use in any manner which may seem expedient just as freely as private owners might do. In short, the public have no more right in law to take fish in non-navigable rivers belonging to the provinces than they have to fell and carry away trees growing on the public lands; in the one instance, as in the other, such interferences with provincial rights of property are neither more nor less than illegal acts of trespass.

This being so, it seems very clear to me that no well-founded distinction, as regards the power of legislation by parliament, can be made between fisheries in rivers which, at the date of confederation, were the property of private owners under grants from the Crown and those which remain the property of the provinces as part of the public domain. In both cases the right of fishing is a profit of the land, an incident of the proprietary right in the soil, and is as much property in the hands of the province as in that of a private owner. Then, if the *British North America Act* contains nothing warranting federal legislative interference with this right of property in the case of a private owner, how can it be asserted that it does so when the ownership is vested in the province? The Crown lands are expressly assured to the provinces, and these include the beds of all such streams as that now in question. Where it was intended to make an exception to the

1882

THE QUEEN v. ROBERTSON.

Strong, J.

general terms of the 109th sec. of the Act, as in the case of property reserved to *Canada* by the 108th sec., and the power to assume lands or public property for the purposes of defence, conferred by the 117th sec., we find such exceptions expressed in clear and distinct enactments. How, then, can it be presumed, in view, not only of the 109th sec., but also of the 5th enumeration of sec. 92, giving the provinces exclusive legislative powers respecting the public lands, and that as to property generally in sub-sec. 13 of sec. 92, that the Dominion has the power to legislate respecting these fisheries incidental to the ownership of the provincial lands, or respecting any other dismemberment of the right of property in such lands, if it is not conferred by the clause in sec. 91 respecting sea coast and inland fisheries? Not a single provision of the *British North America Act* can be pointed to as conferring such powers of legislation, except that just mentioned, which, for the reasons already given in considering the case of private owners, must be held inapplicable.

I therefore come to a different conclusion in this respect from that arrived at in the judgment of the Exchequer Court.

"There are, of course, fisheries of a very different character from those in non-navigable waters to be found within the limits of all the provinces—public fisheries, such as those in tidal rivers and in the great lakes of the western provinces. A question may arise whether the provisions contained in sec. 91 authorizes parliament to empower the Crown to grant exclusive rights in respect of such fisheries. Upon this point it would not be proper now to express any opinion since none has been raised for adjudication. The same may also be said of an important question which may hereafter be presented for decision as to the right to legislate so as to authorize exclusive rights in respect of fisheries in

1882

THE QUEEN v. ROBERTSON.

Strong, J.

what have been called by Chancellor *Kent*, the "great rivers," meaning large navigable non-tidal rivers, a question the solution of which must depend on whether the beds of such rivers are vested in the Crown in right of the Dominion, not as part of its domain, but as trustees for the public, or in the owners of the adjacent lands, inasmuch as the right of fishing would in the first case be in the public as of common right, but in the second vested in the riparian proprietors.

These are questions the discussion of which would not be appropriate in the present case, and I refer to them only to point out that what I have said, as to rivers of the class to which the portion of the *Miramichi* now in question belongs ,has no reference either to navigable fresh water rivers or to the great lakes.

I consider that I shall sufficiently answer the different questions propounded for the decision of this court by stating my opinion that the Crown had no power to grant the license in question, and that the same is absolutely void; and, further, that the Crown has no power under the statute of 1868 to grant an exclusive right of fishing in any non-navigable river, whether the bed or soil of such river be vested in the Crown in right of the province, or in a private owner deriving title under a grant from the Crown made either before or since the passing of the *British North America Act.*

FOURNIER, J. :—

Après les savantes dissertations que l'on vient d'entendre sur l'importante question soumise à la considération de cette cour, il serait inutile pour moi de revenir sur les faits de la cause, et de discuter longuement de nouveau les questions de droit qu'elle présente. Mais comme la question de juridiction, entre le pouvoir local et le pouvoir fédéral, soulève encore ici la question de savoir jusqu'à quel point le pouvoir fédéral exerçant son

1882

THE QUEEN v. ROBERTSON.

Fournier, J.

pouvoir législatif sur un sujet de sa compétence peut affecter les droits particulièrement réservés aux provinces, et plus spécialement les droits civils, je crois devoir réitérer l'expression de mon opinion à ce sujet. Me fondant sur l'opinion des plus hautes autorités judiciaires des *Etats-Unis*, qui ont été appelées à décider des questions analogues, sur la juridiction et les droits respectifs des *Etats* et du gouvernement fédéral de l'Union américaine, j'ai adopté, dès le début, leur opinion qu'il n'était pas possible d'établir une règle uniforme d'interprétation pouvant servir à la décision de toutes les questions de conflit de ce genre. Cette opinion a été aussi exprimée plusieurs fois depuis par le Conseil Privé de Sa Majesté. *Cushing* v. *Dupuy* (1) *Parsons* v. *The Citizen's Ins. Co.* (2) décidée en novembre dernier.

Dans une cause assez récente, j'ai eu occasion de dire et je le répète, 'que le gouvernment fédéral a, sans doute, le pouvoir de toucher incidemment à des matières qui sont de la juridiction des provinces.' Mais dans mon opinion, ce pouvoir ne s'étend pas au-delà de ce qui est raisonnable et nécessaire à une législation ayant uniquement pour but le légitime exercice d'un pouvoir conféré au gouvernement fédéral. Cette règle, pas plus qu'aucune autre, ne peut être d'une application générale. Toutefois, appliquée à la question actuelle, je crois qu'il est facile de concilier les intérêts respectifs des deux gouvernements. La section 91, sous-section 12 de l'Acte de l'*Amérique Britannique du Nord*, en donnant au gouvernement fédéral le pouvoir de légiférer sur les pêcheries, ne lui en attribue pas le droit de propriété. Il ne les enlève pas des propriétaires ou possesseurs d'alors pour se les approprier. Ce n'est pas ainsi non plus que cette section a été interprétée par l'acte 31 Vic., ch. 60, passé très peu de temps après l'acte de confédération. La sec. 2 déclare expressément

(1) 5 App. Cas. 415. (2) 45 L. T. N. S. 721.

que le " ministre de la Marine et des Pêcheries pourra, " lorsque le droit exclusif de pêcher n'existe pas déjà en " vertu de la loi, émettre ou autoriser l'émission de baux " ou licences de pêche pour pêcher en tout endroit où " se fait la pêche." Comme on le voit les droits de tous ceux qui avaient un intérêt ou une propriété dans les pêcheries sont respectés. Sous le rapport du droit de propriété l'acte fédéral, ni l'acte des pêcheries n'ont fait de changement à l'état de choses existant avant la confédération. La propriété est demeurée ou elle était auparavant. Il n'y a donc sous ce rapport aucun empiètement de la part du pouvoir fédéral. Si l'action du département de la Marine n'a pas été conforme à ce principe, comme dans les cas actuel, cette action est nulle. Tout en respectant le droit de pêche comme propriété le gouvernement fédéral ne peut-il pas y exercer, dans l'intérêt général de la Puissance, un droit de surveillance et de protection ? Je crois que oui, et que c'est là précisément le but des pouvoirs législatifs que lui ont été conférés à ce sujet. Il n'y a, suivant moi, aucune incompatibilité entre l'exercice de ce pouvoir avec l'exercice du droit de pêche, comme droit de propriété en d'autres mains que ceux du gouvernement. Le gouvernement fédéral peut, suivant moi, dire au propriétaire : " Vous ne pêcherez qu'en certaines saisons et qu'avec certains instruments ou engins de pêche autorisés." Cette restriction n'est pas une atteinte, mais bien plutôt une restriction accordée a ce genre de propriété. C'est une réglémentation, je dirai, de police et de contrôle sur un genre de propriété qu'il est important de développer et de conserver pour l'avantage général. On sait ce que deviendrait en peu de temps les pêcheries, s'il était libre aux particuliers de les exploiter comme bon leur semblerait. En peu d'années, leur aveugle avidité aurait bientôt ruiné ces sources de richesses—et nos pêcheries, au lieu de revenir aussi riches et aussi

1882

THE QUEEN v. ROBERTSON.

Fournier, J.

fécondes qu'autrefois, retourneraient bientôt à l'état de dépérissement, sinon de ruine, où elles étaient avant d'avoir été l'objet d'une législation protectrice. Ce pouvoir de réglementation, de surveillance et de protection a été, avant la Confédération, exercé par chaque province dans l'intérêt public. C'est le même pouvoir qu'exerce aujourd'hui le gouvernement fédéral. Pas plus que les provinces ne l'ont fait, il n'a le pouvoir de toucher au droit de propriété dans les pêcheries, son pouvoir se borne à en régler l'exercice.

A l'endroit particulier auquel s'appliquent le bail et la licence, dont la validité est attaquée, la rivière *Miramichi* n'est pas navigable ; elle n'est que flottable d'après l'admission de faits qui tient lieu de preuve en cette cause. C'est pour cette raison que je m'abstiendrai de faire aucune observation sur plusieurs autres questions importantes, savamment discutées dans le jugement de l'honorable juge *Gwynne*, concernant le droit de pêche dans les eaux navigables. Il me suffit de déclarer, pour les fins de cette cause, que je suis d'avis avec l'honorable juge en chef que le droit de pêche dans les eaux non-navigables est un attribut de la propriété riveraine,—que ce soit une province ou un particulier qui soit propriétaire,—sujet, toutefois, au droit du public de faire usage de ces rivières non navigables comme voies de communication, autant que leur nature le permet Je suis encore d'opinion avec l'honorable juge en chef, que l'exercice du droit de pêche dans ces mêmes rivières est soumis au pouvoir réglémentaire du gouvernement fédéral au sujet des pêcheries.

HENRY, J. :—

After a full consideration of the issues before us I think the appeal in this case should be dismissed. The *British North America Act* of 1867 conveys to the Do-

1882

THE QUEEN v. ROBERTSON.

Henry, J.

minion no property in the sites of the sea coast or inland fisheries, as I construe it. In section 91, which defines the powers of the Dominion Parliament, we find included "Sea coast and inland fisheries." That provision in the enumeration of the *powers* enables the parliament of the Dominion to legislate on the subject, as it does in respect of matters such as "Shipping and navigation," "Ferries," "Bills of exchange and promissory notes" and many others, without passing any right of property in the several subject-matters. In fact, in my opinion the power under the Act is but to regulate the fisheries and to sustain and protect them by grants of money and otherwise as might be considered expedient.

Independently of the Imperial statute the Dominion parliament has no power to legislate in respect of property or civil rights in the province, and could not otherwise by enactment affect the tenure of or title to real property. By the common law the owner of the soil has the right of fishery in unnavigable streams and water courses. That right, to be taken away, restrained, or transferred, must be by a Parliament having jurisdiction over the subject-matter, and to possess and exercise the power to interfere with and control private property and interests there must have been an express grant of that power in the Imperial Act. I have searched in vain for such, or even anything that would suggest the conclusion that such was intended. I am therefore of the opinion that the leases granted by the several Ministers of Marine and Fisheries, so far as they cover private property or affect private rights, are wholly irregular and void.

The same principles are applicable where lands are under the control of and owned by the local governments in trust for the use of the people of the several provinces.

1882

THE QUEEN v. ROBERTSON.

Henry, J.

I think, therefore, that by force of the agreement under which this case is prosecuted the respondent is entitled to our judgment. As the learned Chief Justice had prepared a judgment which embraces my views upon the leading points in the case, I have not thought it necessary to put my judgment in writing.

TASCHEREAU, J.:—

I am of opinion to dismiss this appeal on the ground that, as an exclusive right of fishing existed in the part of the *Miramichi* River in question, the Minister of Marine and Fisheries could not legally grant a license to fish for that portion of the said river.

*Appeal dismissed with costs.*

Attorneys for appellant: *O'Connor & Hogg.*

Attorney for respondent: *R. G. Haliburton.*

# SPECIAL REPORT

ON THE

# FISHERIES PROTECTION SERVICE

OF

# CANADA,

## DURING THE SEASON OF 1886.

The Honorable

GEORGE E. FOSTER,

Minister of Marine and Fisheries.

SIR,—The many enquires that have been made of the Department during the year as to the present and past attitude of the Fisheries Question, have prompted me to state briefly its history, noting in turn, since 1783, the several "Treaties" and "Regulations," together with the Acts of the Provinces prior to Confederation and those of the Dominion, which from time to time have been passed, to regulate the Fisheries, during the periods to which the statement submitted refers.

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### THE FISHERIES QUESTION.

Before the War of Independence, in 1775, British American colonists enjoyed equal privileges in the North American inshore fisheries; but, on the conclusion of peace, it became a question how far such privileges should be continued to those who had voluntarily severed their connection with the British Crown.

The matter was fully discussed in the negotiations which preceded the Treaty of Paris, and an agreement was arrived at by which United States' citizens were allowed the liberty to fish and to dry and cure fish on certain defined portions of the coasts of British America.

#### THE TREATY OF PARIS.

The Third Article of the Treaty of Paris, of 3rd September, 1783, reads as follows:—

"It is agreed that the people of the United States shall continue to enjoy unmolested "the right to take fish of every kind on the Grand Bank and on all the other banks of New- "foundland, also in the Gulf of St. Lawrence, and at all other places in the sea, where the "inhabitants of both countries used, at any time heretofore, to fish; and also that the

"inhabitants of the United States shall have liberty to take fish of every kind on such part "of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the "same on that island), and also on the coasts, bays and creeks of all other of His Britannic "Majesty's dominions in America; and that the American fishermen shall have liberty to "dry and cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Mag-"dalen Islands and Labrador, so long as the same shall remain unsettled; but so soon as "the same, or either of them, shall be settled, it shall not be lawful for the said fishermen "to dry or cure fish at such settlement without a previous agreement for that purpose with "the inhabitants, proprietors or possessors of the ground."

It will be observed that the wording of this Article is carefully guarded, and that, while it continues to the citizens of the United States the right of prosecuting within the area in question what may be called the deep-sea fisheries, it conveys to them simply the liberty to take, or to dry and cure fish therein upon certain defined portions of the British American coasts, and under certain expressed conditions.

The fisheries continued to be regulated by this Treaty until the War of 1812 by which, the liberties granted United States' citizens under the Treaty of 1783 were terminated.

### The Treaty of Ghent.

The Treaty of Ghent, signed in 1814, contained no reference to the Fisheries Question, although in the negotiatiations which led up to that event, the subject was discussed by the plenipotentiaries of the two powers concerned. Their respective contentions are shown by the following statements made by the commissioners on behalf of each Government. On the part of the British Government it was stated that "they did not intend to grant to the United States *gratuitously* the pri-"vileges formerly granted by Treaty to them of fishing within the limits of the "British sovereignty, and of using the shores of the British territories for purposes "connected with the British fisheries." They contended that, the claim advanced by the United States of immemorial and prescriptive right was quite untenable, inasmuch as the Americans had, until the Revolution, been British subjects, and that the rights which they possessed formerly, as such, could not be continued to them after they had become citizens of an independent State; while the American plenipotentiaries declared that they were "not authorized to bring into discussion any "of the rights or liberties which the United States have heretofore enjoyed in rela-"tion thereto; from their nature, and from the peculiar character of the Treaty of "1783, by which they were recognized, no further stipulation has been deemed "necessary by the Government of the United States to entitle them to the full enjoy-"ment of them all."

Immediately after the conclusion of this Treaty the British Government determined upon a vigorous protection of the colonial fisheries, and instructions were issued as follows:—

INSTRUCTIONS *from the British Government to the Governor of Newfoundland, relative to the Privileges enjoyed by Citizens of the United States to fish within British Jurisdiction.*

DOWNING STREET, 17th June, 1815.

SIR,—As the Treaty of Peace lately concluded with the United States contains no provisions with respect to the fisheries, which the subjects of the United States enjoyed under the III Article of Peace of 1783, His Majesty's Government consider it not unnecessary that you should be informed as to the extent to which those privileges are affected by the omission of any stipulation in the present treaty, and of the line of conduct which it is in consequence advisable for you to adopt.

You cannot but be aware that the III Article of the Treaty of Peace of 1783, contained two distinct stipulations, the one recognizing the rights which the United States had to take fish upon the high seas, and the other granting to the United States the privilege of fishing within the British jurisdiction, and of using under certain conditions the shores and territories of His Majesty for purposes connected with the fishery; of these, the former being considered permanent, cannot be altered or affected by any change of the relative situation of the two countries, but the other being a privilege derived from the treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the treaty itself. On the declaration of war by the American Government and the consequent abrogation of the then existing treaties, the United States forfeited, with respect to the fisheries, those privileges which are purely conventional, and (as they have not been renewed by stipulation in the present treaty) the subjects of the United States can have no pretense to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fishery.

Such being the view taken of the question of the fisheries, as far as relates to the United States, I am commanded by His Royal Highness the Prince Regent to instruct you to abstain most carefully from any interference with the fishery, in which the subjects of the United States may be engaged either on the Grand Banks of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time you will prevent them, except under the circumstances hereinafter mentioned, from using the British territory for purposes connected with the fishery, and will exclude their fishing vessels from the bays, harbours, rivers, creeks and inlets of all His Majesty's possessions. In case, however, it should have happened that the fishermen of the United States, through ignorance of the circumstances which affects this question, should, previous to your arrival, have already commenced a fishery similar to that carried on by them previous to the late war, and should have occupied the British harbours, and formed establishments on the British territory, which could not be suddenly abandoned without very considerable loss, His Royal Highness the Prince Regent, willing to give every indulgence to the citizens of the United States which is compatible with His Majesty's rights, has commanded me to instruct you to abstain from molesting such fishermen, or impeding the progress of their fishing during the present year, unless they should, by attempts to carry on a contraband trade, render themselves unworthy of protection or indulgence; you will, however, not fail to communicate to them the tenor of the instructions which you have received, and the view which His Majesty's Government take of the question of the fishery, and you will above all be careful to explain to them that they are not, in any future season, to expect a continuance of the same indulgence.

I have, &c.,
(Sd.) BATHURST.

Vice Admiral Sir RICHARD G. KEATS.

The enforcement of these orders led to numerous seizures of United States' fishing vessels found within the limits of the colonial maritime jurisdiction, either fishing, remaining in harbors without necessity therefor, or using the coasts for purposes connected with their fisheries.

These stringent measures led to the reopening of negotiations by the President of the United States, in 1818, for the purpose of settling in an amicable manner, the disputed points which had arisen in connection with the Fisheries. Commissioners were appointed by both parties, and The Convention of 1818 was signed at London, on the 20th October of that year.

## The Convention of 1818.

Article I of this Convention reads as follows :—

"Whereas differences have arisen respecting the liberty claimed by the United States "for the inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbours "and creeks of His Britannic Majesty's dominions in America, it is agreed between the "High Contracting Parties that the inhabitants of the said United States shall have, for- "ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of "every kind on that part of the southern coast of Newfoundland which extends from "Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland "from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, "and also on the coasts, bays, harbours and creeks from Mount Joly, on the southern "coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly "indefinitely along the coast, without prejudice, however, to any of the exclusive rights of "the Hudson Bay Company ; and that the American fishermen shall also have liberty, "forever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the "southern part of the coast of Newfoundland, hereabove described, and of the coast of "Labrador ; but so soon as the same or any portion thereof shall be settled, it shall not be "lawful for the said fishermen to dry or cure fish at such portions so settled, without "previous agreement for such purpose with the inhabitants, proprietors or possessors of "the ground. And the United States hereby renounce forever any liberty heretofore "enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within "three marine miles of any of the coasts, bays, creeks or harbours of His Britannic "Majesty's dominions in America not included within the above-mentioned limits. Pro- "vided, however, that the American fishermen shall be admitted to enter such bays or "harbours for the purpose of shelter, and of repairing damages therein, of purchasing "wood, and of obtaining water, and for no other purpose whatever. But they shall be "under such restrictions as shall be necessary to prevent their taking, drying or curing "fish therein, or in any other manner whatever abusing the privileges hereby reserved "to them."

By the terms of this Convention, United States' fishermen have secured to them forever the liberty :—

1. To take fish, (*a*) on the southern coast of Newfoundland, from Cape Ray to the Rameau Islands; (*b*) on the western and northern coast of Newfoundland from Cape Ray to the Quirpon Islands; (*c*) on the shores of the Magdalen Islands, and (*d*) on the southern coast of Labrador from Mount Joly to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast.

2. To dry and cure fish in any of the unsettled bays, harbours and creeks of the southern coast of Newfoundland and the coast of Labrador, as described in the Treaty.

3. To be admitted to the bays and harbour of His Britannic Majesty's dominions in America for purposes of, (*a*) shelter, (*b*) repairing damages, (*c*) purchasing wood, (*d*) obtaining water, "and for no other purpose whatever."

In 1819, the Act (59 Geo. III., Cap. 38) was passed by the Imperial Government for the due execution of the provisions of the Convention. Acts for a similar purpose and modeled after the Imperial Act were passed by the colonial legislatures, as follows :—

1836.—An Act relating to the Fisheries and for the prevention of illicit trade in the Province of Nova Scotia, and the coasts and harbours thereof. 6 William IV, chap. 8.

1843.—An Act relating to the Fisheries and for the prevention of illicit trade in Prince Edward Island and the coasts and harbours thereof. 6 Vic., chap. 14.

1853.—An Act relating to the coast fisheries and for the prevention of illicit trade. New Brunswick, 16 Vic., chap. 69.

1862.—Of the Coast and Deep-Sea Fisheries. Nova Scotia, 25 Vic., chap. 94.

1866.—An Act to amend the above. 29 Vic., chap. 35.

1868.—An Act respecting Fishing by Foreign Vessels. 31 Vic., chap. 61.

1870.—An Act to amend the above. 33 Vic., chap. 15.

1871.—An Act further to amend the above. 34 Vic., chap. 23.

1886.—An Act further to amend the above. 49 Vic., chap. 114.

Under these the British and Colonial Governments enforced the Treaty of 1818, and protected the inshore fisheries of the British American colonies.

From 1818 to 1851, fifty-one United States' fishing vessels were seized, of which twenty-five were condemned and twenty-six released either by the Admiral commanding or by order of the Courts of Vice-Admiralty.

The offences for which seizures were made and penalties imposed during this period were:—

1. Fishing within the limits set forth in the Convention of 1818.

2. Preparing to fish.

3. Purchasing and bartering bait and supplies.

4. Being in harbours and bays when not necessary for purposes of shelter and repairs, or of obtaining wood and water.

This vigorous enforcement of the provisions of the Convention led to negotiations between the United States and Great Britain, which ultimately resulted in the Reciprocity Treaty of 5th June, 1854. The clauses of this Treaty relating, more especially to the fisheries are as follows:—

THE TREATY OF RECIPROCITY.

ARTICLE I.

"It is agreed by the High Contracting Parties, that in addition to the "liberty secured to the United States' fishermen by the above-mentioned Convention "of 20th October, 1818, of taking, curing and drying fish on certain coasts of the "British North American colonies therein defined, the inhabitants of the United "States shall have, in common with the subjects of Her Britannic Majesty, the liberty "to take fish of every kind, except shell fish, on the sea-coasts and shores, and in the "bays, harbors and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's "Island, and of the several islands thereunto adjacent, without being restricted to "any distance from the shore, with permission to land upon the coasts and shores "of those colonies and the islands thereof, and also upon the Magdalen Islands, for "the purpose of drying their nets and curing their fish; provided that in so doing

"they do not interfere with the rights of private property, or with British fishermen "in the peaceable use of any part of the said coast in their occupancy for the same "purpose.

"It is understood that the above mentioned liberty applies solely to the sea "fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the "mouths of rivers are hereby reserved exclusively for British fishermen.

"And it is further agreed that in order to prevent or settle any disputes as to "the places to which the reservation of exclusive right to British fishermen con- "tained in this article, and that of fishermen of the United States contained in the "next succeeding article, apply, each of the High Contracting Parties, on the appli- "cation of either to the other, shall, within six months thereafter, appoint a Com- "missioner. The said Commissioners, before proceeding to any business, shall "make and subscribe a solemn declaration that they will impartially and carefully "examine and decide, to the best of their judgment, and according to justice and "equity, without fear, favor, or affection to their own country, upon all such places "as are intended to be reserved and excluded from the common liberty of fishing "under this and the next succeeding article; and such declaration shall be entered "on the record of their proceedings. The Commissioners shall name some third "person to act as an arbitrator or umpire in any case or cases on which they may "themselves differ in opinion.

"If they should not be able to agree upon the name of such third person, they "shall each name a person, and it shall be determined by lot which of the two per- "sons so named shall be the abritrator or umpire in cases of difference, or disagree- "ment between the Commissioners. The person so to be chosen to be arbitrator or "umpire, shall, before proceeding to act as such in any case, make and subscribe a "solemn declaration in a form similar to that which shall already have been made "and subscribed by the Commissioners, which shall be entered on the record of "their proceedings.

"In the event of the death, absence or incapacity of either of the Commis- "sioners, or of the arbitrator, or umpire, or of their or his omitting, declining or "ceasing to act as such commissioner, arbitrator or umpire, another and different "person shall be appointed, or named as aforesaid, to act as such commissioner, "arbitrator or umpire in the place and stead of the person so originally appointed, "or named as aforesaid, and shall make and subscribe such declarations as aforesaid.

"Such Commissioners shall proceed to examine the coasts of the North "American Provinces and of the United States, embraced within the provisions of "the first and second articles of this Treaty, and shall designate the places reserved "by the said articles from the common right of fishing therein. The decision of "the Commissioners, and of the arbitrator or umpire shall be given in writing in "each case, and shall be signed by them respectively.

"The High Contracting Parties hereby solemnly engage to consider the deci- "sion of the Commissioners conjointly, or of the arbitrator or umpire, as the case "may be, absolutely final and conclusive in each case decided upon by them or "him respectively."

ARTICLE II.

"It is agreed by the High Contracting Parties that British subjects shall have, "in common with the citizens of the United States, the liberty to take fish of every "kind, except shell-fish, on the eastern sea coasts and shores of the United States, "north of the thirty-sixth (36th) parallel of north latitude and on the shores of the "several islands thereunto adjacent, and in the bays, harbors and creeks of the said "sea coasts and shores of the United States, and of the said islands, without being "restricted to any distance from the shore, with permission to land upon the said "coasts of the United States, and of the islands aforesaid, for the purpose of drying "their nets and curing their fish, provided that in so doing they do not interfere "with the rights of private property, or with the fishermen of the United States, "in the peaceable use of any part of the said coasts in their occupancy for the "same purpose.

"It is understood that the above mentioned liberty applies solely to the sea-"fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths "of rivers are hereby reserved exclusively for fishermen of the United States."

In connection with Article II of the above Treaty, it may be mentioned that, Canadians found no advantages in the privilege of fishing on the eastern sea-coasts of the United States north of the 36th parallel of latitude, and consequently, did not avail themselves of such privilege.

A Commission composed of M. H. Perley, Esq., on behalf of the British Government, and of John Hubbard, Esq., on behalf of that of the United States, was engaged from 1856 till 1860 in determining the places (74 in number) to which the exclusive right of fishing under the first and second Articles of the Treaty aforesaid applied.

The Reciprocity Treaty continued in force from 1854 until 1866, when it terminated, after the twelve months' notice therein provided had been given by the United States' Government. Efforts were made by Canada and Great Britain for its renewal, but failed, and, as a consequence of such failure, the American privileges under it lapsed and the Convention of 1818 revived.

It then became necessary to consider what measures should be adopted for the protection of British rights.

The following Royal Proclamation, warning all citizens of the United States that their rights to fish in the inshore waters of Canada would cease with the termination of the Reciprocity Treaty on the 17th of March, 1866, was issued by Viscount Monck, Governor General of Canada.

PROVINCE OF CANADA, } PROCLAMATION.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.*

To all whom these presents shall come, or whom the same may concern, GREETING.

Whereas a certain Treaty was made between Her Majesty and the United States of America, on the 5th of June, 1854, providing for reciprocal trade, and whereas the United States of America have, in accordance with the terms of the said Treaty, given notice for the termination thereof; and whereas in consequence of such notice the said Treaty will expire on the 17th day of March, 1866:

And whereas, under the said Treaty, many persons, citizens of the United States of America, have invested moneys and fitted out ships for the purpose of carrying on the (inshore) fisheries within the territory of Canada under the said Treaty:

And whereas they may be unaware that their right to carry on such inshore fisheries will end on the said 17th day of March:

"We, therefore, in our great desire to prevent injury or loss to our loving subjects, or to the citizens of a state with which we are happily in amity, do in this, our Royal Proclamation, caution and warn all persons not subjects of our

realm that after the said 17th day of March next, no vessels owned and manned in the United States of America can pursue the inshore fisheries without rendering themselves liable to the confiscation of their vessels, and such other penalties, pecuniary and personal, as are by law imposed.

(Signed) MONCK.

In order to prevent, as far as possible, the injury and loss which must be inflicted on United States' fishermen by a sudden withdrawal of privileges which they had enjoyed for twelve years, the Imperial Government felt inclined to allow the freedom of fishing which had prevailed from 1854 to 1866 to continue for the season of 1866, on the distinct understanding that, unless some satisfactory arrangement between the two countries was arrived at in the course of the year, such privilege would cease.

In deference to the wishes expressed by Her Majesty's Government and notwithstanding contrary opinions, the Government of Canada adopted the temporary expedient of issuing season licenses to American fishing vessels at a nominal tonnage rate. This system was maintained for four years with very unsatisfactory results, owing to neglect on the part of American fishermen to provide themselves with licenses, as may be seen by the following statement:—

SCHEDULE *of Licenses issued to American Fishing Vessels each year since* 1866, *in the several Provinces forming the Dominion of Canada, with the fees collected thereon.*

| Year. | Number. | Rate per ton. | Fees Collected. |
|---|---|---|---|
| | | $ cts. | $ cts. |
| 1866 | 365 | 0 50 | 19,677 50 |
| 1867 | 270 | 1 00 | 13,929 00 |
| 1868 | 56 | 2 00 | 5,573 73 |
| 1869 | 25 | 2 00 | 2,041 61 |

These figures show that, during the first year of the license system, the vigorous policy hitherto pursued induced a large proportion of United States' fishermen, resorting to Canadian waters, to take out licenses; but this number gradually decreased until it had dropped to twenty-five in 1869.

The failure of the license system being apparent, it became necessary to adopt further measures for the efficient enforcement of British rights, and by an Order in Council of the Dominion Government, dated 8th January, 1870, it was determined to abolish the system of licenses and to equip a sufficient force for the protection of the coasts. This force was afterwards supplemented by the assistance of British ships of war on the North American station.

FISHERIES PROTECTION POLICE.

The following vessels were employed as cruisers during the season of 1870 :—

| Name of Vessel. | Tonnage. | Crew. | Charter. Rate per month. | In Command of. |
|---|---|---|---|---|
| | | | $ | |
| Steamer "Lady Head" | 168 | 25 | Gov't property | Capt. P. A. Scott, R.N. |
| Schooner "La Canadienne" | 100 | 24 | do ... | do N. Lavoie. |
| do "England" | 75 | 12 | 340 | do G. V. Story, L.R.N. |
| do "Ella G. McLean" | 78 | 12 | 350 | do H. E. Betts, R.N.R. |
| do "Ida E" | 70 | 12 | 350 | do J. A. Tory, C. Customs. |
| do "Water Lily" | 71 | 12 | 280 | do F. S. Ewan, R.N.R. |
| do "Sweepstake" | 60 | 12 | 300 | do J. C. Carmichael. |
| do "Stella Maris" | 61 | 12 | 300 | do L. H. Lachance. |

These vessels were placed under the immediate direction of Capt. Scott, R.N., who was instructed to confer, from time to time, with the Vice-Admiral commanding the North American squadron with a view to co-operation in all matters affecting the fisheries service.

In addition to the above the following vessels, commanded by officers of Her Majesty's Navy, were engaged to patrolling the fishing grounds during the season of 1870 :—

| Name of Vessel. | Commander. | Rank. |
|---|---|---|
| Steamer "Royal Alfred" | E. G. Fanshawe | Vice-Admiral. |
| do "Britomart" | B. E. Cochrane | Commander. |
| do "Lapwing" | C. G. F. Knowles | do |
| do "Philomel" | Douglas Walker | do |
| do "Royalist" | R. S. Bateman | do |
| do "Cherub" | N. S. F. Digby | do |
| do "Sphinx" | H. B. Phillimore | do |
| do "Plover" | Jas. A. Poland | do |
| Frigate "Valorous" | E. Hardinge | do |

During that year fifteen American fishing vessels were seized by Imperial and Canadian cruisers as follows:—

| Name of Vessel. | By whom Seized. | In Command of. | How Disposed of. |
|---|---|---|---|
| "S. G. Marhall"..... | Capt. Hardinge..... | H.M.S. "Valorous"..... | Tried in Vice-Admiralty Court at Charlottetown. Condemned and sold. |
| "Albert"..... | do do ..... | do do ..... | do do |
| "Clara F. Friend".. | do Poland ..... | do "Plover"..... | Taken to Charlottetown for adjudication, rescued by crew and recaptured. |
| "Wampatuck"..... | do Jas. A. Tory..... | Can. Cruiser "Ida E"..... | Tried in Vice-Admiralty Court at Halifax, condemned and sold. |
| "J. H. Nickerson". | do do ..... | do do ..... | Tried in Vice-Admiralty Court at Halifax, vessel condemned and purchased by the Canadian Government. |
| "Minnie"..... | do do ..... | do do ..... | Violation of Customs Laws. Defendant fined $800 and costs. |
| "A. J. Franklin"... | do do ..... | do do ..... | Tried in Vice-Admiralty Court at Halifax. Vessel condemned. |
| "Granada"..... | do do ..... | do do ..... | Violation of Customs laws. Vessel bonded. |
| "Romp"..... | do Albert Betts..... | do "Water Lily"..... | Tried in Vice-Admiralty Court at St. John, N.B. Vessel condemned and sold. |
| "White Fawn"..... | do do ..... | do do ..... | Tried in Vice-Admiralty Court at St. John, N.B. Released for want of evidence. |
| "Perseverance"..... | do do ..... | do do ..... | Taken to St. John, N.B., for adjudication. Condemned and sold. |
| "Lettie"..... | do H. E. Betts..... | do "Ella G. McLean" | Result unknown. |
| "Lizzie A. Tarr"... | do N. Lavoie ..... ..... | do "La Canadienne" | Tried in Vice-Admiralty Court at Quebec. Condemned and sold. |
| "A. H. Wanson"... | do J.C.E. Carmichael | do "Sweepstake" .... | Tried in Vice-Admiralty Court at Halifax. Condemned; bail forfeited. |
| "H. W. Lewis"..... | do do ... | do do .... | Tried in Vice-Admiralty Court at Halifax. Result unknown. |

In 1871, the following vessels were engaged in the Fisheries Protection Service:—

| Name of Vessel. | Tonnage. | Crew. | Charter. Rate per Month. | Commanded by. |
|---|---|---|---|---|
| | | | $ | |
| Steamer "Lady Head" | 168 | 25 | Gov't property | Capt. P. A. Scott. |
| Schooner "La Canadienne" | 100 | 24 | do ... | do N. Lavoie. |
| do "Water Lily" | 71 | 12 | $ 280 | do G. V. Story, L.R.N. |
| do "Ella G. McLean" | 78 | 12 | 350 | do do |
| do "New England" | 75 | 12 | 340 | do D. M. Brown, R.N. |
| do "Sweepstake" | 60 | 12 | 300 | do J. A. Tory, C. Customs. |
| do "Stella Maris" | 61 | 12 | 300 | do L. H. Lachance. |
| do "S. G. Marshall" | 53 | 12 | United States' seized vessel. | do G. W. Creighton. |

Three American fishing vessels were seized during that year as follows:—

| Name of Vessel. | By whom Seized. | In Command of. | How Disposed of. |
|---|---|---|---|
| "Samuel Gilbert" | Captain N. Lavoie | Cruiser "La Canadienne." | Tried in Vice-Admiralty Court at Quebec. Condemned; released for costs. |
| "F. S. Schenck" | do D. M. Brown | do "New England." | Vessel taken to Quebec for adjudication. Released on bond. |
| "E. A. Horton" | do J. A. Tory | do "Sweepstake." | Rescued by United States' citizens. |

In 1872, the following cruisers were employed:—

| Name of Vessel. | Tonnage. | Crew. | Charter. Rate per Month. | Commanded by. |
|---|---|---|---|---|
| | | | $ | |
| Steamer "Lady Head" | 168 | 25 | Gov't property | Capt. P. A. Scott, R.N. |
| Schooner "La Canadienne" | 100 | 24 | do ... | do N. Lavoie. |
| do "Peter Mitchell" | 100 | 12 | $ 400 | do D. M. Brown. |
| do "New England" | 75 | 12 | 340 | do W. T. Frost. |
| do "J. W. Dunscomb" | 98 | 12 | 380 | do Jas. A. Tory. |
| do "Katie" | 60 | 12 | 300 | do Geo. Matson. |
| do "Stella Maris" | 60 | 12 | 300 | do L. H. Lachance. |
| do "S. G. Marshall" | 53 | 12 | United States' seized vessel. | do Jas. A. Nickerson. |
| do "J. A. Nickerson" | 70 | 12 | do ... | do J. N. Purdy. |

Two American fishing vessels were seized during that year as follows:

| Name of Vessel. | By whom Seized. | In Command of. | How Disposed of. |
|---|---|---|---|
| "Enola C" ..... | Capt. L. H. Lachance ..... | "Stella Maris"..... | Sureties discharged. |
| "James Bliss" .... | do ..... | do ..... | do |

In the year 1871, negotiations between Great Britain and the United States resulted in the appointment of a "Joint High Commission" to whom were referred several matters in dispute between the two Governments, among which was included the question of the North American fisheries. This Commission held its first meeting at Washington on the 27th February, 1871, and what is known as "The Washington Treaty" was signed on the 8th May of the same year.

### THE WASHINGTON TREATY.

The Articles of this Treaty which relate to the fisheries are as follows:—

#### "ARTICLE XVIII.

"It is agreed by the High Contracting Parties that in addition to the liberty "secured to the United States' fishermen by the Convention between Great Britain "and the United States, signed at London on the 20th day of October, 1818, of tak- "ing, curing and drying fish on certain coasts of the British North American "Colonies therein defined, the inhabitants of the United States shall have, in common "with the subjects of Her Britannic Majesty, the liberty, for the term of years men- "tioned in Article XXXIII of this Treaty, to take fish of every kind, except shell- "fish, on the sea-coasts and shores, and in the bays, harbors and creeks, of the "Provinces of Quebec, Nova Scotia and New Brunswick, and the colony of Prince "Edward's Island, and of the several islands thereunto adjacent, without being "restricted to any distance from the shore, with permission to land upon the said "coasts and shores and islands, and also upon the Magdalen Islands, for the purpose "of drying their nets and curing their fish; provided that, in so doing, they do not "interfere with the rights of private property or with British fishermen, in the "peaceable use of any part of the said coasts in their occupancy for the same "purpose.

"It is understood that the above mentioned liberty applies solely to the sea "fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and "the mouths of rivers are hereby reserved exclusively for British fishermen.

#### ARTICLE XIX.

"It is agreed by the High Contracting Parties that British subjects shall have, "in common with the citizens of the United States, the liberty, for the term of years "mentioned in Article XXXIII of this treaty, to take fish of every kind, except "shell-fish, on the eastern sea-coasts and shores of the United States north of the "thirty-ninth parallel of north latitude, and on the shores of the several islands "thereunto adjacent, and in the bays, harbors and creeks of the said sea-coasts and "shores of the United States and of the said islands, without being restricted to any "distance from the shore, with permission to land upon the said coasts of the United "States and of the islands aforesaid for the purpose of drying their nets and curing "their fish; provided that, in so doing, they do not interfere with the rights of "private property, or with the fishermen of the United States, in the peaceable use "of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above mentioned liberty applies solely to the sea "fishery, and that salmon and shad fisheries, and all other fisheries in rivers and "mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

"It is agreed that the places designated by the Commissioners appointed under "the 1st Article of the treaty between Great Britain and the United States, concluded "at Washington, on the 5th of June, 1854, upon the coasts of Her Britannic Majesty's "Dominions and the United States, as places reserved from the common right of "fishing under that treaty, shall be regarded as in like manner reserved from the "common right of fishing under the preceding Articles. In case any question should "arise between the Governments of the United States and of Her Britannic Majesty "as to the common right of fishing in places not thus designated as reserved, it is "agreed that a Commission shall be appointed to designate such places, and shall be "constituted in the same manner, and have the same powers, duties and authority as "the Commission appointed under the said 1st Article of the Treaty of the 5th of "June, 1854.

ARTICLE XXI.

"It is agreed that, for the term of years mentioned in Article XXXIII of this "Treaty, fish oil and fish of all kinds (except fish of the inland lakes and of the "rivers falling into them, and except fish preserved in oil), being the produce of the "fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's "Island, shall be admitted into each country respectively free of duty.

ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that "the privileges accorded to the citizens of the United States under Article XVIII of "this Treaty are of greater value than those accorded by Articles XIX and XXI of "this Treaty to the subjects of Her Britannic Majesty, and this assertion is not "admitted by the Government of the United States, it is further agreed that Com-"missioners shall be appointed to determine, having regard to the privileges "accorded by the United States to the subjects of Her Britannic Majesty, as stated in "Articles XIX and XXI of this Treaty, the amount of any compensation which, in "their opinion, ought to be paid by the Government of the United States to the "Government of Her Britannic Majesty in return for the privileges accorded to the "citizens of the United States under Article XVIII of this Treaty; and that any sum "of money which the said Commissioners may so award shall be paid by the United "States' Government, in a gross sum, within twelve months after such award shall "have been given.

ARTICLE XXIII.

"The Commissioners referred to in the preceding Article shall be appointed "in the following manner, that is to say: One Commissioner shall be named by Her "Britannic Majesty, one by the President of the United States, and a third by Her "Britannic Majesty and the President of the United States conjointly; and in case "the third Commissioner shall not have been so named within a period of three "months from the date when this Article shall take effect, then the third Commis-"sioner shall be named by the Representative at London of His Majesty the Em-"peror of Austria and King of Hungary. In case of the death, absence, or incapa-"city of any Commissioner, or in the event of any Commissioner omitting or ceasing "to act, the vacancy shall be filled in the manner hereinbefore provided for making "the original appointment, the period of three months in case of such substitution "being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the City of Halifax, in the Prov-"ince of Nova Scotia, at the earliest convenient period after they have been respec-"tively named, and shall, before proceeding to any business, make and subscribe a

"solemn declaration that they will impartially and carefully examine and decide the "matters referred to them to the best of their judgment, and according to justice and "equity; and such declaration shall be entered on the record of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend "the Commission as its agent, to represent it generally in all matters connected "with the Commission.

ARTICLE XXIV.

"The proceedings shall be conducted in such order as the Commissioners "appointed under Articles XXII and XXIII of this Treaty shall determine. They "shall be bound to receive such oral or written testimony as either Government may "present. If either party shall offer oral testimony, the other party shall have the "right of cross-examination, under such rules as the Commissioners shall prescribe.

"If in the case submitted to the Commissioners either party shall have speci- "fied or alluded to any report or document in its own exclusive possession without "annexing a copy, such party shall be bound, if the other party thinks proper to "apply for it, to furnish that party with a copy thereof; and either party may call "upon the other, through the Commissioners, to produce the originals or certified "copies of any papers adduced as evidence, giving in each instance such reasonable "notice as the Commissioners may require.

"The case on either side shall be closed within a period of six months from "the date of the organization of the Commission, and the Commissioners shall be "requested to give their award as soon as possible thereafter. The aforesaid period "of six months may be extended for three months in case of a vacancy occurring "among the Commissioners under the circumstances contemplated in Article XXIII "of this Treaty.

ARTICLE XXV.

"The Commissioners shall keep an accurate record and correct minutes or "notes of all their proceedings, with the dates thereof, and may appoint and employ "a Secretary and any other necessary officer or officers to assist them in the transac- "tion of the business which may come before them.

"Each of the High Contracting Parties shall pay its own Commissioner and "Agent or Counsel; all other expenses shall be defrayed by the two Governments "in equal moities."

ARTICLE XXXII.

"It is further agreed that the provisions and stipulations of Articles XVIII to "XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far "as they are applicable. But if the Imperial Parliament, the Legislature of New- "foundland, or the Congress of the United States shall not embrace the Colony of "Newfoundland in their laws enacted for carrying the foregoing Articles into effect, "then this Article shall be of no effect; but the omission to make provision by law "to give it effect, by either of the Legislative bodies aforesaid, shall not in any way "impair any other Articles of this Treaty.

ARTICLE XXXIII.

"The foregoing Articles XVIII to XXV, inclusive, and Article XXX of this "Treaty, shall take effect as soon as the laws required to carry them into operation "shall have been passed by the Imperial Parliament of Great Britain, by the Parlia- "ment of Canada, and by the Legislature of Prince Edward's Island, on the one "hand, and by the Congress of the United States on the other. Such assent having "been given, the said articles shall remain in force for the period of ten years from "the date at which they may come into operation; and further until the expiration "of two years after either of the High Contracting Parties shall have given notice "to the other of its wish to terminate the same; each of the High Contracting "Parties being at liberty to give such notice to the other at the end of the said "period of ten years, or at any time afterwards."

The Acts necessary to enable these articles to be carried into effect having been passed, a Proclamation fixed upon the 1st July, 1873, as the date on which they were to come formally into operation.

At the request of the United States' Government, Canada anticipated the time proposed and, in April, 1873, admitted American fishermen to the use of the privileges specified in the Treaty in advance of the date fixed upon by Legislative enactment. American fishermen at once availed themselves of the freedom of Canadian inshore waters. Similar concessions were made in July, 1871, by the Legislature of Prince Edward Island (which Province did not at that time form part of the Dominion) and by the Legislature of Newfoundland, although the full privileges granted by the United States under the Treaty were not accorded to Canada and Prince Edward Island until July 1, 1873, and in the case of Newfoundland not until June 1, 1874.

The next proceeding was the appointment of a Commission in conformity with Article XXII of the Treaty. This Commission was constituted as follows:—

Sir A. T. Galt, named by the Queen of England.
Hon. H. Kellogg, named by the President of the United States.
Mr. M. Delfosse, named by the Emperor of Austria-Hungary.

This Commission met in Halifax on the 15th June, 1877, for the purpose of determining the amount of compensation to be awarded for the extension of the fishery privileges mentioned in the Treaty, and after sitting over five months, awarded the sum of $5,500,000 to be paid to the Government of England by that of the United States.

### Termination of the Treaty of Washington.

The reciprocal arrangements made under the Treaty of Washington remained in force for a period of ten years, when, on the 3rd March, 1883, the following Resolution was adopted by the United States' Congress:—

Joint Resolution *providing for the termination of Articles numbered eighteen to twenty-five, inclusive, and Article numbered thirty of the Treaty between the United States of America and Her Britannic Majesty, concluded at Washington, May eighth, eighteen hundred and seventy-one.*

"Resolved by the Senate and House of Representatives of the United States of "America in Congress assembled: That in the judgment of Congress the provisions of "Articles numbered eighteen to twenty-five, inclusive, and of Article thirty of the Treaty "between the United States and Her Britannic Majesty, for an amicable settlement of all "causes of difference between the two countries, concluded at Washington on the eighth "day of May, anno Domini eighteen hundred and seventy-one, ought to be terminated at "the earliest possible time, and be no longer in force: and to this end the President be, "and he hereby is, directed to give notice to the Government of Her Britannic Majesty "that the provisions of each and every of the articles aforesaid, will terminate and be of no "force on the expiration of two years next after the time of giving such notice.

"*Sec.* 2. That the President be, and he hereby is, directed to give and communicate to "the Government of Her Britannic Majesty such notice of such termination on the first "day of July, anno Domini eighteen hundred and eighty-three, or as soon thereafter as "may be.

"*Sec.* 3. That on and after the expiration of the two years' time required by said "Treaty, each and every of said articles shall be deemed and held to have expired and be "of no force and effect, and that every Department of the Government of the United "States shall execute the laws of the United States (in the premises) in the same manner "and to the same effect as if said articles had never been in force; and the Act of Con- "gress approved 1st March, anno Domini eighteen hundred and seventy-three, intituled: "'An Act to carry into effect the provisions of the treaty between the United States and "'Great Britain, signed in the city of Washington the eighth day of May, eighteen hundred "'and seventy-one, relating to the fisheries,' so far as it relates to the articles of said treaty "so to be terminated, shall be and stand repealed and be of no force on and after the time "of the expiration of the said two years."

Approved 3rd March, 1883.

On 2nd July, 1883, the United States' Minister at London accordingly notified Her Majesty's Government that the Fishery Articles of the Treaty of Washington would terminate on the 1st July, 1885.

A temporary agreement, as the result of negotiations, was entered into between the United States and Great Britain, the purport of which is set forth in the following proclamation issued by the President of the United States:—

AGREEMENT *between the United States and Great Britain respecting the Fisheries. Concluded 22nd June,* 1885.

NOTICE.

By direction of the President, the undersigned Secretary of State hereby makes known to all whom it may concern, that a temporary diplomatic agreement has been entered into between the Government of the United States and the Government of Her Britannic Majesty in relation to the fishing privileges which were granted by the fishery clauses of the treaty between the United States and Great Britain, of 8th May, 1871, whereby the privilege of fishing, which would otherwise have terminated with the treaty clauses on the 1st of July proximo, may continue to be enjoyed by the citizens and subjects of the two countries engaged in fishing operations throughout the season of 1885.

This agreement proceeds from the mutual good will of the two Governments, and has and has been reached solely to avoid all misunderstanding and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885, in the midst of the season.

The immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States engaged in fishing in the British American waters, will likewise be extended to British vessels and subjects engaged in fishing in the waters of the United States.

The Joint Resolution of Congress, of 3rd March, 1883, providing for the termination of the Fishery Articles of the Treaty of 8th May, 1871, having repealed in terms, the Act of 1st March, 1873, for the execution of the Fishery Articles, and that repeal being express and absolute from the date of the termination of the said Fishery Articles; under due notification given and proclaimed by the President of the United States, to wit, 1st July, 1885, the present temporary agreement in no way affects the question of statutory enactment or exemption from Customs duties, as to which the abrogation of the Fishery articles remains complete.

As part of this agreement, the President *will bring the whole question of the fisheries before Congress at its next session* in December, and recommend the appointment of a Joint Commission by the Government of the United States and Great Britain to consider the matter, in the interest of maintaining good neighborhood and friendly intercourse between the two countries, thus affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

Copies of the memoranda and exchanged notes on which this temporary agreement rests are appended. Reference is also made to the President's Proclamation of 31st January, 1885, terminating the Fishery Articles of the Treaty of Washington.

By direction of the President,

(Sd.) T. F. BAYARD,
*Secretary of State.*

It will be noticed that, under this agreement, the provisions of the Washington Treaty, in so far as they relate to fisheries, were extended by the Government of Canada until the close of the season's fishing of 1885, in order to avoid complications between both Governments as well as to obviate hardships in the case of parties whose vessels had been fitted for a whole season's fishing, and the President of the United States was to recommend the appointment of a Joint Commission for the settlement of the whole fishery question as well as for the extension and development of trade relations, which he did in his Annual Message to Congress in December, 1885, in the following terms:—

### Extract from the President's Message.

"The marked good-will between the United States and Great Britain has been maintained during the past year.

"The termination of the fishery clauses of the Treaty of Washington, in pursuance of the Joint Resolution of 3rd March, 1883, must have resulted in the abrupt cessation on the 1st of July of this year, in the midst of their ventures, of the operations of the citizens of the United States engaged in fishing in British American waters but for a diplomatic understanding reached with Her Majesty's Government in June last, whereby assurance was obtained that no interruption of those operations should take place during the current fishing season.

"In the interest of good neighborhood and of the commercial intercourse of adjacent communities, the question of the North American fisheries is one of much importance.

"Following out the intimation given by me when the extensory arrangement above described was negotiated, I recommend that the Congress provide for the appointment of a Commission in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement, upon a just, equitable and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America. The fishing interests being intimately related to other general questions dependent upon contiguity and intercourse, consideration thereof, in all their equities, might also properly come within the purview of such a commission, and the fullest latitude of expression on both sides should be permitted."

This recommendation was not, however, favorably entertained by the Committee on Foreign Relations, who reported on the 14th April, 1886, that, "In the opinion of the Senate the appointment of a Commission, in which the Governments of the United States and Great Britain shall be represented, charged with the consideration and settlement of the fishing rights of the two Governments, on the coasts of the United States and British North America, ought not to be provided for by Congress."

The above Resolution was agreed to by a vote of 35 against 10 and determined in the affirmative.

### Remarks.

The Washington Treaty went into operation in 1873 and continued in force until 1st July, 1885. During these years there were no disputes, no seizures of American poaching schooners, and this might have continued had not the United States' Government given notice of the termination of the Treaty, upon which all the privileges granted under it ceased, and no other course was left the Canadian Government but to adopt means for the protection of its rights, as secured by the Convention of 1818.

Steps were, in consequence, immediately taken for the equipment of a Fisheries Protection Force, and the following vessels were put in commission in the spring of 1886 and continued to cruise on their respective stations until the close of the fishing season:

| Name of Vessel. | Tonnage. | Crew. | Charter. Rate per month. | Commanded by. |
|---|---|---|---|---|
| | | | $ | |
| Steamer "Lansdowne" | 463 | 34 | Govt. property. | Captain P. A. Scott, R.N. |
| do "Acadia" | 483 | 34 | do | do do |
| do "La Canadienne" | 227 | 30 | do | do Wm. Wakeham. |
| Schooner "L. Houlett" | 74 | 18 | 300 | do C. M. Lorway. |
| do "Terror" | 80 | 18 | 250 | do Thos. Quigley. |
| do "General Middleton" | 67 | 18 | 300 | do Jas. McLean. |
| do "F. E. Conrod" | 66 | 18 | 300 | do M. Smeltzer. |
| do "Critic" | 57 | 18 | 260 | do Wm. McLaren. |
| do "Lizzie Lindsay" | 91 | 18 | 300 | do L Pouliot. |

The steamer "Acadia" was purchased in August at a cost of $40,000 to replace the "Lansdowne." She has proved in every respect well fitted for the service.

The number of United States' vessels seized or detained during the season of 1886, for violations of the Treaty rights or infractions of Customs' Regulations, will be found at Appendix B, page 48, of the present report.

## INSTRUCTIONS TO COMMANDERS OF GOVERNMENT VESSELS ENGAGED IN THE PROTECTION OF THE INSHORE FISHERIES OF CANADA.

DEPARTMENT OF FISHERIES,
OTTAWA, 16th March, 1886.

SIR,—In the performance of the special and important services to which you have been appointed you will be guided by the following confidential instructions.

For convenience of reference, these have been divided under the different headings of *Powers, Jurisdiction, Duties and General Directions.*

### POWERS.

The Powers with which you are invested, are derived from, and to be exercised in accordance with the following statutes, among others:—"The Fisheries Act" (31 Vic., cap. 60, of Canada); "An Act respecting Fishing by Foreign Vessels" (31 Vic., cap. 61, of Canada), and the subsequent statute entitled: "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed the 12th May, 1870 (33 Vic., cap. 15, of Canada); also, "An Act to further amend the said Act" (34 Vic., cap. 23, of Canada).

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the "Coast and Deep Sea Fisheries"), amended by the Act entitled: "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia" (29 Vic., cap 35).

An Act passed by the Legislature of the Province of New Brunswick entitled: "An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade" (16 Vic., cap. 69).

Also an Act passed by the Legislature of Prince Edward Island (6 Vic., cap. 14) entitled: "An Act relating to the Fisheries, and for the prevention of Illicit Trade in Prince Edward Island, and the coasts and harbors thereof."

Also from such regulations as have been passed or may be passed by the Governor General in Council, or from instructions from the Department of Fisheries, under "The Fisheries Act," hereinbefore cited.

As Fishery Officer you have full authority to compel the observance of the requirements of the *Fisheries Acts* and regulations by foreign fishing vessels and fishermen in those parts of the coasts of Canada to which, by the Convention of 1818, they are admitted to privileges of taking or drying and curing fish concurrent with those enjoyed by British fishing vessels and fishermen.

You will receive instructions from the Customs Department authorizing you to act as an officer of the Customs, and in that capacity you are to see that the Revenue Laws and Regulations are duly observed.

JURISDICTION.

Your jurisdiction with respect to any action you may take against foreign fishing vessels and citizens engaged in fishing is to be exercised only within the limits of "three marine miles" of any of "the coasts, bays, creeks or harbours," of Canada.

With regard to the Magdalen Islands, although the liberty to land and to dry and cure fish there is not expressly given by the terms of the convention to United States fishermen, it is not at present intended to exclude them from these islands.

DUTIES.

It will be your duty to protect the inshore fisheries of Canada in accordance with the conditions laid down by the Convention of the 20th October, 1818, the first article of which provides:—

"Whereas, differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry and cure fish, on certain coasts, bays, harbours and creeks, of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind, on that part of the Southern Coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the Southern Coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours and creeks, of the Southern part of the coast of Newfoundland, hereabove described, and of the Coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground."

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and repairing of damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

By this you will observe, United States fishermen are secured the liberty of taking fish on the Southern Coasts of Labrador, and around the Magdalen Islands, and of drying and curing fish along certain of the Southern Shores of Labrador, where this coast is unsettled, or if settled, after previous agreement with the settlers or owners of the ground.

In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz.,—*for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen, in those parts to which they are admitted by the Treaty of 1818.

You are to see that they obey the laws of the country, that they do not molest British fishermen in the pursuit of their calling and that they observe the regulations of the fishery laws in every respect.

You are to prevent foreign fishing vessels and boats which enter bays and harbours for the four legal purposes above mentioned, from taking advantage thereof, to take, dry or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

It is not desired that you should put a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation and circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. *The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the wish of Her Majesty's Government that the rights of exclusion should not be strained,* must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen or the property of Canadians appear to be inseparable from the exercise of such indulgence, you will withhold it and insist upon entire exclusion.

United States fishermen should be made aware that, in addition to being obliged, in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto, they are peculiarly bound to preserve peace and order in the *quasi* settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board their vessels while afloat, and the throwing overboard of offals, thus fouling the fishing, feeding and breeding grounds. "The Fisheries Act" (Section 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

### GENERAL DIRECTIONS.

You will accost every foreign fishing vessel within the limits described, and if that vessel should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, you will, by virtue of the authority conferred upon you by your Commission, and under the provisions of the Acts above recited, seize at once (resort to force in doing so being only justifiable after every other effort has failed) any vessel detected in violating the law and send her or take her into port for condemnation.

Copies of the Acts of Parliament subjecting to seizure and forfeiture any foreign ship, vessel or boat which should be either fishing preparing to fish or should obviously have been fishing within the prohibited limits, and providing for carrying out the seizure and forfeiture are furnished herewith for your information and distribution.

Should you have the occasion to compel any foreign fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish offals, setting of nets, hauling of seines, and use of "trawls" or "bultows," more especially at and around the Magdalen Island, your power and authority under such cases will be similar to that of any other fishery officer appointed to enforce the Fishery Laws in Canadian waters (*Vide Fisheries Act*).

If a foreign ship, vessel or boat be found violating the Convention or resisting consequent seizure, and momentarily effects her escape from the vicinity of her capture or elsewhere, she remains always liable to seizure and detention if met by yourself in Canadian waters, and British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the indentity of any offending vessel to be so dealt with.

All vessels seized must be placed, as soon as possible, in the custody of the nearest Customs Collector, and information, with a statement of the facts, and the deposition of your sailing master, clerk, lieutenant or mate, and of two at least of the most reliable of your crew be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the violation of the law took place, and the ship, vessel or

boat was seized. Also corroborate the bearings taken, by sounding, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicious points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel or boat.

Omit no precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it is possible that foreign fishing craft may be driven into Canadian waters by violent or contrary winds, by strong tides, through misadventure, or some other cause independent of the will of the master and crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing or detaining any vessel.

On capture, it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will, in such emergency, endeavour to engage a few trustworthy men. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port are met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel dispose to give, which do not conflict with those instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign fishing vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised on every opportunity, where instructions would most probably reach you at stated intervals.

Directions as to the stations and limits on which you are to cruise, and any further instructions that may be deemed necessary, will, from time to time, be conveyed to you.

Considerable inconvenience is caused by Canadian fishing vessels neglecting to show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly urged upon you, nor can you too earnestly impress upon the officers and crew under your command, that the service in which you and they are engaged should be performed with forbearance and discrimination.

The Government relies on your prudence, discretion and firmness in the performance of the special duties entrusted to you.

I am, Sir,

Your odedient servant,

(Sd.) GEORGE E. FOSTER,
*Minister of Marine and Fisheries.*

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## The Season's Work and the Way it was performed.

To briefly summarize the work done by the Fisheries Protection Cruisers, during the season of 1886, I beg to state that, the S.S. "Lansdowne" was put in commission on the 20th March, cruising around the coasts of Nova Scotia, Bay of Fundy and Prince Edward Island, until the middle of September, when she was replaced by the S.S. "Acadia," purchased for this service.

The latter steamer continued to patrol on the same grounds until the close of the season, occasionally paying a flying visit to Bay des Chaleurs to see that the duties of the Cruiser stationed at the entrance were properly attended to.

The S.S. "La Canadienne" was engaged cruising in the Gulf of St. Lawrence, around Magdalen Islands and in Bay des Chaleurs, from the 17th May until the 27th October.

The Schooner "Houlett" was placed in commission on the 15th May and cruised, until the close of the season, mostly around the coast of Prince Edward Island and in the Straits of Northumberland.

The Schooner "Critic" began her work on the 15th June and continued until the 30th October, cruising off the coasts of Prince Edward Island.

The Schooner "Conrod" was put in commission on the 15th of May and continued patrolling the Strait of Northumberland until the 15th November.

The Schooner "Terror" was employed from the 19th May until the 4th December protecting the eastern coast of Nova Scotia.

The Schooner "General Middleton" was kept cruising in the Bay of Fundy from 11th May until the close of the season. The principal part of her duties consisted in protecting the valuable herring fisheries of Grand Manan and Campobello.

The Schooner "L. Lindsay" was stationed during the fishing season at the mouth of Bay des Chaleurs.

Reference to the Boarding Reports published at Appendix A will show the particulars of 780 official visits to vessels of the fishing fleet during the season of 1886. These visits were, with a few exceptions, to United States fishing vessels, some of which were boarded several times.

### Expenditure.

The expenditure in connection with the Fisheries Protection Service will be found in detail at page 50 of Appendix C. The aggregate expenditure for this service up to 31st December, 1886, was $130,112.18, which amount includes the sum of $40,000 paid for the purchase of the iron steamer "Acadia."

### Conclusion.

It is gratifying to acknowledge the efficiency of the staff employed in connection with the above force, to whose individual zeal and discretion the successful enforcement of the Fishery Article of the Convention of 1818, and the general welfare of the Fisheries Protection Service are much indebted.

I have the honor to be, Sir,
Your most obedient servant,

JOHN TILTON,
*Deputy Minister of Fisheries.*

Department of Fisheries,
31st December, 1886.

# CATALOGUE

OF

# CANADIAN PINNIPEDIA, CETACEA, FISHES

AND

# MARINE INVERTEBRATA

EXHIBITED BY THE

DEPARTMENT OF FISHERIES OF THE DOMINION GOVERNMENT.

BY

J. F. WHITEAVES, F.G.S., F.R.S.C.

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OTTAWA.

1886

# CATALOGUE

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# CANADIAN PINNIPEDIA, CETACEA, FISHES AND MARINE INVERTEBRATA

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## PINNIPEDIA.

FAMILY ODOBÆNIDÆ.—(Walruses.)

**Odobænus rosmarus,** L. (Sp.)—*Atlantic Walrus.*

Skull. Locality not stated. Also specimen, stuffed, from Hudson's Bay.

FAMILY PHOCIDÆ.—(Earless Seals.)

**Phoca vitulina,** L.—*Harbour Seal.*

No. 194. One specimen, stuffed, from the Gulf of St. Lawrence.

**Phoca Grœnlandica,** Fabricius.—*Harp Seal.*

Nos. 191, 192, 193. Specimens from one to three years old, from the Gulf of St. Lawrence.

One adult specimen from Blanc Sablon, Strait of Belle Isle.

**Cystophora cristata,** Erxleben.—*Hooded Seal.*

Nos. 188, 189. Two specimens, stuffed, from the Gulf of St. Lawrence.

## CETACEA.

FAMILY DELPHINIDÆ.—(The Dolphins, etc.)

**Phocæna communis,** Cuvier.—*Common Porpoise.*

Nos. 198, 199. Two stuffed specimens from the Gulf of St. Lawrence.

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## FISHES.

In this list the classification and nomenclature adopted (except some of the local English names) are those of Jordan & Gilberts' "Synopsis of the Fishes of North America," published in 1883 in the 24th Volume of the Smithsonian Miscellaneous Collections.*

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## CLASS ELASMOBRANCHII.

SUB-CLASS SELACHII.
(The Sharks and Rays.)

ORDER SQUALI.
(The Sharks.)

FAMILY SCYMNIDÆ.—(The Sleeper Sharks.)

**Somniosus microcephalus,** Bloch. (Scymnus borealis, auct.)—*The Greenland Shark.*

No. 181. One large specimen, stuffed, from opposite the mouth of the Saguenay River, P. Q., the original weight of which was 600 lbs. Said to be a formidable foe of the whale.

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* These identifications of fishes must be regarded as provisional to a certain extent, most of the species being represented by stuffed specimens, which could not be closely examined owing to their being mounted in closed cases.

FAMILY SPINACIDÆ.—(The Dog-fishes.)

**Squalus acanthias,** L.—*Picked Dog-fish.*

Nos. 155, 140 & 144. One female (stuffed) from British Columbia.
Two stuffed specimens from the Gulf of St. Lawrence.
Two fœtal specimens, in alcohol.

FAMILY LAMNIDÆ.—(The Porbeagles.)

**Lamna cornubica,** Gmelin.—*Beaumaris Shark—Porbeagle.*

No. 186. One male specimen (stuffed) from the Gulf of St. Lawrence.
No. 187. One female specimen from the Gulf of St. Lawrence.

## ORDER RAIÆ.
## (The Rays.)

FAMILY RAIIDÆ.—(The True Rays.)

**Raia radiata,** Donovan.—*Starry Ray.*

No. 202. One specimen, in alcohol. With egg capsule.

**Raia lævis,** Mitchill.—*Smooth Skate.*

No. 179. Two large specimens from New Brunswick.

## SUB-CLASS HOLOCEPHALI.
## (The Chimæras.)

### ORDER HOLOCEPHALI.
### (The Chimæras.)

FAMILY CHIMÆRIDÆ.—(The Chimæras.)

**Chimæra Colliæi,** Bennett.—*Rat-fish—Elephant-fish.*

No. 163. Male and female (stuffed) from the coast of British Columbia.

Mr. Anderson, late Inspector of Fisheries for that province, says: "This fish is viviparous. The male is provided with a cartilaginous snout, armed with recurved teeth on its extremity. This projection is described as being used occasionally as a weapon of defense, but its normal use is that of a prehensile organ subservient to the purpose of reproduction."

# CLASS PISCES.
## (The True Fishes.)

### Sub-class Chondrostei.
### (The Sturgeons.)

### Order Selachostomi.
### (The Paddle-fishes.)

Family Polyodontidæ.—(The Paddle-fishes.)

**Polyodon spathula,** Walbaum.—*Paddle-nosed Sturgeon.*

No. 99. One stuffed specimen from Lake Ontario, near Sarnia, Ont.

### Order Glaniostomi.
### (The Sturgeons.)

Family Acipenseridæ.—(The Sturgeons.)

**Acipenser sturio,** L., **var oxyrhynchus,** Mitchill.—*Sharp-nosed Sturgeon—American Sturgeon.*

No. 196. One large stuffed specimen, about 8 ft. in length, from the St. Lawrence River.

No. 103. Seven small specimens from Lake Erie.

Nos. 111, 123. Two do. from the Lower St. Lawrence, and one from the same locality.

No. 203. Two small specimens in alcohol.

**Acipenser brevirostris,** Le Sueur.—*Short-nosed Sturgeon.*

No. 98. One large stuffed specimen from Lake Ontario.

**Acipenser transmontanus,** Richardson.—*White Sturgeon—Columbia River Sturgeon.*

No. 195. One stuffed specimen, whose weight when caught was 150 lbs., from the mouth of the Fraser River, British Columbia.

## Sub-class Holostei.
## (The Bony Ganoids.)

### Order Ginglymodi.
### (The Gar Pikes.)

Family Lepidosteidæ.—(The Gar Pikes.)

**Lepidosteus osseus,** L.—*Common Gar-pike—Long-nosed Gar.*

No. 8. Two stuffed specimens from Lake Ontario.
No. 8. (*a*) One specimen from the Gatineau River, P. Q.

### Order Halecomorphi.
### (The Amias.)

Family Amiidæ.—(The Mud-fishes.)

**Amia calva,** L.—*Mud-fish—Beaver-fish—Dog-fish.*

No. 112. One stuffed specimen from Lake St. Peter, P. Q.
No. 159. Two stuffed specimens from Lake Ontario.

## Sub-class Physostomi.
## (The Soft-rayed Fishes.)

### Order Nematognathi.
### (The Cat-fishes.)

Family Siluridæ.—(The Cat-fishes.)

**Amiurus catus,** L.—*Common Cat-fish—Small Cat-fish—Horned Pout.*

No. 133. Two stuffed specimens from Lake Ontario.

**Ictalurus nigricans,** Le Sueur.—*Lake Cat-fish—Great Forked-tailed Cat-fish.*

No. 131. One stuffed specimen from Lake Ontario.
No. 132. One stuffed specimen from Red River, Manitoba.

ORDER EVENTOGNATHI.
(The Plectospondylous Fishes.)

FAMILY CATASTOMIDÆ.—(The Suckers.)

**Carpiodes cyprinus,** Le Sueur.—*High-finned Sucker—Quill-back—Sail-fish, etc.*

No. 147. One stuffed specimen from Lake Erie.

**Catostomus Commersoni,** Lacépède. (C. Teres, Mitchill.)—*Small-scaled Sucker—Common Sucker.*

No. 137. Two stuffed specimens from Lake Ontario.

**Moxostoma aureolum,** Le Sueur.—*Large-scaled Sucker—Red-finned Sucker.*

No. 124. One stuffed specimen from Lake Ontario.
No. 135. One stuffed specimen from Lake Ontario.
No. 136. One stuffed specimen from Ontario.
No. 146. Two stuffed specimens from Lake Ontario.

ORDER ISOSPONDYLI.
(The Isospondylous Fishes.)

FAMILY HYODONTIDÆ.—(The Moon-Eyes.)

**Hyodon tergisus,** Le Sueur.—*Moon Eye—Toothed Herring.*

No. 62. Five stuffed specimens from Lake Ontario.

FAMILY CLUPEIDÆ.—(The Herrings.)

**Clupea harengus,** L.—*Common Herring—Labrador Herring.*

No. 204. Several specimens in alcohol, in one large bottle.

**Clupea vernalis,** Mitchill. (Alosa tyrannus, Storer.)—*Gaspereau—Alewife.*

No. 205. Six specimens in alcohol, in one bottle.

**Clupea (Alosa) sapidissima,** Wilson.—*Common Shad.*

No. 151. One stuffed specimen.
No. 153. One stuffed specimen.
No. 206. Six specimens in alcohol, in three bottles.

FAMILY SALMONIDÆ.—(The Salmon Family.)

**Mallotus villosus,** Muller.—*Capelin.*

No. 207. Three specimens, in alcohol, from the Gulf of St. Lawrence.

**Osmerus mordax,** Mitchill.—*American Smelt.*

No. 152. Eleven stuffed specimens from the Miramichi River, New Brunswick.

No. 208. A number of specimens in alcohol, in one large bottle.

**Coregonus clupeiformis,** Mitchill.—*Common White-fish.*

No. 31. Seven small stuffed specimens of a local variety from Lake Simcoe.

No. 32. Five specimens from Lake Erie.

No. 45. One large specimen, stuffed.

No. 46. One large specimen, stuffed.

No. 62. Four stuffed specimens of a variety from Ontario locally known as "greybacks."

**Coregonus (Argyrosomus) Artedi,** Le Sueur.—*Lake Herring—Cisco.*

No. 30. Nine stuffed specimens from Lake Erie.

No. 209. Three specimens in alcohol.

**Onchorhynchus keta?** Walbaum.—*Hook-nosed Salmon—Dog Salmon—Quâ-lo.*

No. 14. One specimen from coast of British Columbia (stuffed).

No. 25. " " " " "

No. 36. " " " " "

No. 53. " " " " "

**Onchorynchus tchawytcha,** Walbaum. (Salmo quinnat, Richardson.)—"*Quinnat*"—*Spring Salmon—Saw-quai.*

No. 2. Large specimen from River's Inlet, opposite Queen Charlotte's Sound, B.C., which weighed 73 lbs. when caught.

No. 3. Another specimen from the same locality, which weighed 70 lbs. when caught.

No. 12. Another specimen from British Columbia.

No. 13. Specimen caught in Royal Roads, near Victoria, V. I., whose weight was 50 lbs.

Nos. 15, 35, and 37. Specimens from British Columbia. (One in case No. 35 doubtful.)

No. 56. Young specimen hatched at Newcastle, Ont.

No. 57. Five young salmon belonging to this species.

**Onchorhynchus nerka?** Walbaum.—*Suck-kai* or *Blue-back Salmon.*

No. 68. "Ripe" male, stuffed, from New Westminster; original weight 7½ lbs.

**Salmo salar,** L.—*Salmon—Atlantic Salmon.*

No. 1. Adult male in breeding season, from Restigouche River.

No. 10. Adult female, from the same river.

No. 11. Adult male, from the Restigouche River.

No. 22. Female, from Lake Ontario.

No. 23. Male, from Lake Ontario.

No. 24. Female, species doubtful; locality not stated.

No. 36. Specimen from Restigouche River.

No. 51. Specimen from Lake Ontario.

No. 52. Another specimen from the same locality.

No. 54. Two stuffed grilse from Lake Ontario.

No. 55. One specimen, species doubtful; locality not stated.

No. 210. Specimen raised artificially in pond at Tadoussac, which weighed 10 lbs. when caught. In alcohol.
Two young specimens in alcohol in one bottle.
Ten smolts or parrs in alcohol, in two bottles.
Number of fry in alcohol, in two bottles.

**Salmo salar, var. Sebago.**—*Land-locked Salmon—Winninish.*

No. 39. One specimen from Lake St. John, at the head of the Saguenay River, P. Q., stuffed.

**Salvelinus namaycush,** Bloch. Including the vars. *siscowet*, *confinis* and *toma.*—*Great Lake Trout—Lunge* (of Lake Memphremagog)—*Tuladi* (of New Brunswick)..

No. 4. One large specimen from Lake Huron; weight 7½ lbs.; stuffed.

No. 9. One small specimen from the Province of Quebec. (With four other Salmonidæ.)

No. 16. One large specimen from Lake Superior.

No. 17. One large specimen of the variety *confinis*, known locally as the "black or copper lunge," from Lake Memphremagog, P. Q.

No. 26. Another from Lake Superior.
No. 27. One from Lake Huron.
No. 28. One from Lake Superior, known there as the "red salmon."
No. 29. Five small specimens from Georgian Bay, Lake Huron.
No. 42. Stuffed specimen, var. *toma* (the Tuladi) from Lake Metapedia.
No. 43. Stuffed specimen, var. *toma* (the Tuladi) from Lake Metapedia.
No. 44. One specimen from the Province of Quebec.
No. 58. Specimen from Lake Superior, at Port Arthur, of the variety *siscowet*.
No. 59. Specimen from the Province of Quebec.
No. 60. Specimen from Lake Ontario; caught in breeding season.
No. 61. Specimen caught in breeding season; (locality not stated).
No. 75. Specimen from the Province of Quebec.
No. 76. { Young of the "copper lunge" of Lake Memphremagog, P. Q.
{ Young of the normal form of the species, from Georgian Bay, Lake Huron, for comparison.
No. 211. Four specimens in alcohol, two in one bottle, and two in another.

**Salvelinus malma?** Walbaum.—*Pacific Red spotted Trout.*

Nos. 69 and 70. Coquitlam River, Fraser River, B.C. Two stuffed specimens.

**Salvelinus fontinalis,** Mitchill.—*Speckled Trout—Brook Trout.* (Including the var. *immaculatus—The Sea Trout.*)

No. 9. Two specimens, one from Restigouche River (stuffed).
No. 71. Two specimens from the Province of Quebec.
Nos. 72, 73, 74 and 84. Four from Nepigon Bay, Lake Superior, stuffed, in separate cases.
No. 85. One from Restigouche River, stuffed.
No. 88. One from the Moisie River, P. Q., stuffed (the var. *immaculatus*).
No. 212. Ten in alcohol, in one bottle, and two (var. *immaculatus*) in another.

ORDER HAPLOMI.

FAMILY UMBRIDÆ.—(The Mud Minnows.)

**Umbra limi,** Kirtland.—*Black Minnow.*

No. 213. Several specimens in alcohol, in one bottle.

FAMILY ESOCIDÆ.—(The Pikes.)

**Esox reticulatus,** Le Sueur.—*Green Pike.*

No. 19. Three specimens from Lake Memphremagog, P. Q.
No. 93. One specimen from Lake Memphremagog, P. Q.

**Esox lucius,** L.—*Common Pike.*

No. 7. One specimen from Lake St. John, P. Q., which weighed 21 lbs., stuffed.
No. 18. One specimen from Ontario, stuffed.
No. 94. One specimen from Newcastle, Ontario, stuffed.

**Esox nobilior,** Thompson.—*Muskallunge—Maskinongé.*

No. 5. Specimen from Bay of Quinte, Ont., which weighed 42 lbs., stuffed.
No. 6. Specimen from Bay of Quinte, Ont., which weighed 35 lbs., stuffed.

ORDER APODES.
(The Eels.)

FAMILY ANGUILLIDÆ.—(The True Eels.)

**Anguilla rostrata,** Le Sueur.—*Common Eel.*

No. 106. Two specimens from the St. Lawrence River, P. Q., stuffed.
No. 133. One specimen from Lake Ontario, stuffed.
No. 214. One specimen, in alcohol.

## Sub-class Physoclisti.
(Air bladder without duct, in the adult.)

### Order Synentognathi.

Family Scomberesocidæ.—(The Gar-fishes and Flying-fishes.)

**Scomberesox saurus,** Walbaum.—*Saury—Skipper—Bill-fish.*

No. 215. One specimen from the Atlantic coast of Canada, in alcohol.

### Order Lophobranchii.
(Gills tufted.)

Family Syngnathidæ.—(The Pipe-fishes.)

**Siphostoma Californiense,** Storer. (Sp.) (Syngnathus, auct.)—*Big Pipe-fish.*

No. 216. Six specimens from the coast of British Columbia, in alcohol.

Family Hippocampidæ.—(The Sea Horses.)

**Hippocampus heptagonus,** Rafinesque. (H. antiquorum, Leach, and H. Hudsonius, DeKay.)—*Sea Horse.*

No. 217. One specimen from the Atlantic coast of Canada, in alcohol.

### Order Acanthopteri.
(The Spiny-rayed Fishes.)

Family Atherinidæ.—(The Silversides.)

**Menidia notata,** Mitchill.—*Silverside.*

No. 218. Twelve specimens from the Atlantic coast of Canada, in one bottle, in alcohol.

FAMILY AMMODYTIDÆ.—(The Sand Launces.)

**Ammodytes Americanus,** Dekay.—*American Sand Launce.*

No. 219. Many specimens from the Gulf of St. Lawrence, in alcohol, in two bottles.

FAMILY ECHENEIDIDÆ.—(The Remoras.)

**Remora squalipeta,** Daldorf. (Echeneis remora, L.)—*Remora.*

No. 220. Atlantic coast of Canada, one specimen in alcohol.

FAMILY SCOMBRIDÆ.—(The Mackerels.)

**Scomber scombrus,** L. *Common Mackerel.*

No. 139. Two specimens from the Gulf of St. Lawrence, stuffed.
No. 140. Three specimens from the Gulf of St. Lawrence, stuffed.
No. 221. Three specimens in alcohol, one in each bottle.
Six specimens from the coast of Prince Edward Island, in one bottle.

**Scomberomorus maculatus,** Mitchill.—*Spanish Mackerel.*

No. 150. Two stuffed specimens.

**Orycnus thynnus,** L.—*Tunny—Horse Mackerel—Albicore.*

No. 182. One large specimen from the Saguenay district, which weighed 400 lbs. when caught; stuffed.

**Euthynnus pelamys,** L.—*Oceanic Bonito.*

No. 222. One specimen in alcohol.

FAMILY STROMATEIDÆ.—(The Broad Shiners.)

**Stromateus triacanthus,** Peck.—*Dollar fish—Harvest-fish—Butter-fish*

No. 223. Four specimens in alcohol, in two bottles.

FAMILY CENTRARCHIDÆ.—(The Sun-fishes.)

**Pomoxys sparoides,** Lacépède. *Calico Bass—Grass Bass—Strawberry Bass.*

No. 121. Four specimens from Burlington Bay, Ont.; stuffed.

**Ambloplites rupestris,** Rafinesque. (Centrarchus æneus, Cuv. & Val.)—*Rock Bass.*

No. 89. Two specimens from Lake Ontario, stuffed.
No. 90. One specimen from the Province of Quebec, stuffed.
No. 91. One specimen from the Province of Quebec, stuffed.
No. 92. Four specimens from Lake Ontario, also stuffed.

**Lepomis gibbosus,** L. (Pomotis vulgaris, Cuv. and Val., and P. auritus, auct.)—*Common Sun-fish.*

No. 134. Six specimens, stuffed, from the Bay of Quinte, Lake Ontario.

This and the preceding species are among the commonest fresh-water fishes of the Provinces of Ontario and Quebec.

**Micropterus salmoides,** Lacépède. (Huro nigricans, Cuv. and Val.) *Large-mouthed Black Bass—Oswego Bass.*

No. 20. Five specimens from the Bay of Quinte, Ont.; stuffed.
No. 48. One specimen from Rice Lake, Ont.; stuffed.
No. 49. One specimen from Rice Lake, Ont.; stuffed.
No. 175. One specimen from the upper Gatineau River, in the Ottawa valley.

FAMILY PERCIDÆ.—(The Perches.)

**Perca Americana,** Schranck.—*Yellow Perch—American Perch.*

No. 18. One specimen from the Bay of Quinte, Ont.; stuffed.
No. 223 (*a*) One specimen from the Ottawa River, in alcohol.

**Stizostedium vitreum,** Mitchill. (Lucioperca Americana, auct.)—*Dorée—American Pike Perch.*

No. 79. One large specimen from the Bay of Quinte, Ont.; stuffed.
No. 80. One large specimen from Lake Erie, Ont.; stuffed.
No. 81. Four small specimens from Lake Erie, Ont.; stuffed.

FAMILY SERRANIDÆ.—(The Sea Basses.)

**Roccus lineatus**, Bloch.—*Striped Bass.*

No. 21. One stuffed specimen from the Miramichi River, N. B.
No. 33. " " " "
No. 34. " " " "
No. 82. Five small specimens, stuffed, also from the Miramichi River, N. B.
No. 83. One specimen, stuffed, from the Miramichi River, N. B.
No. 224. Two specimens in alcohol.

**Roccus chrysops?** Rafinesque.—*White Bass—Bar-fish.*

No. 102. Six specimens from Lake Erie, stuffed.

**Roccus Americanus**, Gmelin.—*White Sea Perch.*

No. 225. One specimen, in alcohol.

FAMILY SCIÆNIDÆ.—(The Croakers or Maigres.)

**Haploidonotus grunniens**, Rafinesque.—*Sheepshead—Grunter.*

No. 110. One specimen from the Detroit River, Ont.; stuffed.
No. 122. " " " " "

FAMILY LABRIDÆ.—(The Wrasse-fishes.)

**Ctenolabrus dispersus**, Walbaum.—*Cunner—Blue Perch.*

No. 226. Six small specimens from the Gulf of St. Lawrence, in alcohol, in one bottle.

FAMILY CHIRIDÆ.—(The Chiroids.)

**Hexagrammus decagrammus**, Pallas.—*Rock Trout—Green Cod—Ling.*

No. 127. One specimen from Esquimalt Harbour, British Columbia.
No. 129. Another specimen from the same locality.

**Ophiodon elongatus**, Girard.—*Cultus Cod—Blue Cod—Ling.*

No. 104. One specimen from deep water near Victoria, V. I.
No. 113. Another specimen from deep water near Vietoria, V. I.
No. 161. Another specimen from the same locality.

FAMILY SCORPÆNIDÆ.—(The Rock-fishes.)

**Sebastes marinus**, L. (Perca Norwegica, Mull.)—*Rose-fish—Red-fish—Norway Haddock—Snapper.*

No. 169. One specimen from the Atlantic coast of Canada; stuffed.

**Sebastodes ruber**, Ayres.—*Red Rock-fish.*

No. 108. One specimen from the coast of British Columbia; stuffed.

According to the late Mr. Alexander C. Anderson, formerly Inspector of Fisheries for British Columbia, "this is considered to be one of the finest food-fishes of "that province. Its habitat is in very deep water, "along deep rocky shores. It attains a weight of "eleven or twelve pounds or more, and is little if at all "inferior to the Cod for salting. It is caught with "hook and line and is reported to be specially numerous "in the Goletas Channel, at the North end of Van-"couver Island."

**Sebastodes ——?**

No. 142. One specimen from the coast of British Columbia; stuffed.

**Sebastodes nigrocinctus**, Ayres.—*Black-banded Rock-fish.*

No. 227. One specimen from the coast of British Columbia, in alcohol.

FAMILY COTTIDÆ.—(The Sculpins.)

**Hemitripterus Americanus**, Gmelin.—*Sea Raven.*

No. 143. One specimen from the Atlantic coast of Canada; stuffed.
No. 228. Two specimens in alcohol.

**Cottus octodecimspinosus**, Mitchill.—*Common Sculpin.*

No. 143. Two specimens from the Gulf of St. Lawrence; stuffed.
No. 229. One specimen in alcohol.

**Cottus æneus**, Mitchill.—*Brazen Bullhead.*

No. 230. One small specimen from the Atlantic coast of Canada, in alcohol.

**Blepsias cirrhosus**, Pallas.

No. 231. One specimen from the coast of British Columbia, in alcohol.

FAMILY LIPARIDIDÆ.—(The Sea Snails.)

**Liparis Montagui**, Donovan.

No. 232. One specimen from the Atlantic coast of Canada, in alcohol.

FAMILY CYCLOPTERIDÆ.—(The Lump Suckers.)

**Cyclopterus lumpus**, L.—*Lump-sucker—Lump-fish.*

No. 125. One specimen from the Gulf of St. Lawrence; stuffed.

FAMILY BLENNIIDÆ.—(The Blennies.)

**Cryptacanthodes maculatus**, Storer.—*Wry-mouth—Ghost-fish.*

No. 233. One specimen from the Atlantic coast of Canada, in alcohol.

**Anarrhichas lupus**, L.—*Wolf-fish.*

No. 97. One specimen from the Gulf of St. Lawrence; stuffed.
No. 160. One small specimen from the mouth of the River St. Lawrence; stuffed.
No. 234. Two specimens in alcohol.

FAMILY LYCODIDÆ.—(The Eel Pouts.)

**Zoarces anguillaris**, Peck.—*Thick-lipped Eel Pout.*

No. 235. One specimen from the Atlantic coast of Canada or Gulf of St. Lawrence, in alcohol.

FAMILY GADIDÆ.—(The Cod-fishes.)

**Lota maculosa?** Le Sueur.—*Burbot—Fresh-water Ling.*

No. 154. Two specimens from Georgian Bay, Lake Huron; stuffed.

**Brosmius brosme**, Muller.—*Cusk.*

No. 162. One specimen from the Atlantic coast of Canada; stuffed.
No. 236. One specimen in alcohol.

**Gadus æglifinus**, L.—*Haddock.*

No. 114. One specimen from Halifax, N. S.; stuffed.
No. 116. " " " " "
No. 237. Two specimens in alcohol.

**Gadus callarias**, L. (G. morrhua, L.)—*Cod-fish.*

No. 100. One large specimen from Halifax, N. S.; stuffed.
No. 101. One large specimen from the Gulf of St. Lawrence, which weighed 63 lbs. when caught; stuffed.
No. 105. One large specimen from the Gulf of St. Lawrence; stuffed.
No. 118. One specimen from Halifax, N. S.; stuffed.
No. 120. " " " " "
No. 128. Two young specimens from the Gulf of St. Lawrence; stuffed.
No. 238. One specimen in alcohol.

**Gadus tomcod**, Walbaum.—*Tom-cod—Frost-fish.*

No. 141. Six typical specimens from Halifax, N. S.; stuffed.
No. 239. Four specimens in alcohol.

## Order Heterosomata.
(The Flat-fishes.)

### Family Pleuronectidæ.—(The Flounders.)

**Bothus maculatus,** Mitchill.—*Sand-flounder.*

No. 240. One specimen in alcohol.

**Hippoglossus vulgaris,** Fleming.—*Halibut.*

No. 171. Small specimen caught near Victoria, V. I., whose weight when caught was 35 lbs.; stuffed.

No. 183. One large specimen from the Gulf of St. Lawrence; stuffed.

No. 184. Another large specimen from the Gulf of St. Lawrence; stuffed.

No. 241. One small one in alcohol.

**Hippoglossoides platessoides,** Fabricius.—*Rough Dab.*

No. 107. Two large specimens from the Gulf of St. Lawrence; stuffed.

No. 242. One specimen in alcohol.

**Pleuronectes bilineatus,** Ayres.—"*Black Sole.*"

No. 168. One specimen from the coast of British Columbia; stuffed.

**Pleuronectes stellatus,** Pallas.—*California Flounder.*

No. 170. One specimen from the coast of British Columbia; stuffed.

**Pleuronectes glaber,** Storer.—*Smooth Flounder.*

No. 167. Two small females from the Gulf of St. Lawrence, stuffed.

**Pleuronectes Americanus**, Walbaum.—*Winter Flounder—Sand Dab.*

No. 167. Three specimens from the Gulf of St. Lawrence; stuffed, in the same case as the last.

ORDER PEDICULATI.
(The Pediculate Fishes.)

FAMILY LOPHIIDÆ.—(The Fishing Frogs.)

**Lophius piscatorius**, L.—*Angler or Fishing Frog.*

No. 185. One specimen from the Gulf of St. Lawrence; stuffed.

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# INVERTEBRATA.*

## CRUSTACEA.

### DECAPODA.

#### BRACHYURA.

*A.* (From the Gulf of St. Lawrence and Atlantic Coast of of Canada.)

**Cancer irroratus** Say.

No. 166. Four dried specimens.

No. 242. { One dried specimen from Métis, P. Q.
{ Five specimens in alcohol.

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*Most of the invertebrata from the Gulf of St. Lawrence were contributed by Sir William Dawson, L.L.D., F.R.S., &c.

**Hyas coarctata,** Leach.

No. 243. Five dry specimens from Métis, P. Q. Four in one box and one in another.

**Hyas aranea,** L.

No. 244. One dry specimen from Gaspé, P. Q.

**Chionocætes opilio,** Kroyer.

No. 245. Carapace of a large specimen from the Moisie River, P. Q.
One small but entire specimen from Gaspé, P. Q.

ANOMURA.

**Eupagurus pubescens?** Kroyer. (Sp.)

No. 246. From Métis, P. Q.

MACRURA.

**Homarus Americanus,** M. Edwards.—*American Lobster.*

No. 109. Two dry specimens.
No. 178. One dry specimen.
No. 247. One specimen in alcohol, and a number of abnormal claws, dry.

**Crangon vulgaris,** Fabricius.—*Common Shrimp.*

No. 248. Specimen from Métis, P. Q., dry.
Several specimens in alcohol.

**Crangon boreas,** Fabricius.—*Northern Shrimp.*

No. 249. One dry specimen from Métis, P. Q.
One from a different locality, in alcohol.

**Sabinea septemcarinata,** Sabine.

No. 250. From the Bradelle Bank, east of Prince Edward Island.

**Nectocrangon lar**, Owen.

No. 251. From Métis, P. Q.

**Hippolyte Fabricii**, Kroyer.

No. 252. Three specimens from Métis, P. Q., dry.

**Hippolyte spina**, White.

No. 253. Three specimens from the Bradelle Bank, dry.

**Hippolyte aculeata**, Fabricius.

No. 254. From Métis, P. Q.

**Pandalus Montagui**, Leach. (P. annulicornis, Leach.)

No. 255. Three specimens from Métis, P. Q., and one from the Bay of Fundy, all dry. Also a number of specimens, exact locality not given, in alcohol.

ISOPODA.

No. 256. **Œga psora**, L.—*Parasite of Halibut.*

Two specimens in alcohol.

PYCNOGONIDA.

**Pycnogonum littorale**, Ström.

No. 257. One specimen from La Have Bank, U. S. Fish Commission, in alcohol.

CIRRIPEDIA.

**Balanus**, Sp. Undt.

**Balanus**, Sp. Undt.

**Coronula diadema**, Blainville.

No. 258. A number of specimens, dry, attached to a piece of whale's skin.

**Lepas fascicularis,** Ellis & Solander.

No. 259. Five specimens in alcohol.

*B.* (From the Pacific Coast.)

BRACHYURA.

**Cancer magister,** Dana.—*King Crab.*

No. 260. One specimen from near Victoria, V. I., in alcohol.

**Echidnoceros cibarius,** White.—*Great Stone Crab.*

No. 261. One specimen from near Victoria, V. I., in alcohol.

**Small Crab,** genus and species undetermined.

No. 262. Several specimens from near Victoria, V. I., in alcohol.

CIRRIPEDIA.

**Balanus,** Sp. Undt.

No. 263. Near Victoria, V. I.

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## MOLLUSCA.

*A.* (From the Gulf of St. Lawrence or Atlantic Coast.)

CEPHALOPODA.

DECAPODA.

**Ommatostrephes illecebrosa,** Le Sueur.—Common "*Squid*" of the Gulf of St. Lawrence.

No. 264. Several specimens (species doubtful) in one large bottle.
Two others (which are almost certainly *O. illecebrosa,*) in separate bottles.

No. 165. Three dry specimens.

FAMILY NEPTUNIDÆ.

**Sipho Kroyeri,** Moller. (Sp.)

No. 265. Three dry specimens from Métis, P. Q.

**Sipho pygmæus,** Gould.

No. 266. Two dry specimens from the Bay of Fundy.

**Neptunea despecta,** L.

No. 267. From Métis, P. Q.

**Neptunea decemcostata,** Say.

No. 267 (*a*) One specimen.

FAMILY BUCCINIDÆ.

**Buccinum undatum,** L.

No. 268. { Six specimens from Métis, P. Q.
Two specimens (locality not stated), dry, and four in alcohol, in one bottle.

**Buccinum tenue,** Gray.

No. 269. Three specimens from Métis, P. Q.

**Buccinum plectrum,** Stimpson.

No. 270. Two specimens from Métis, P. Q.

FAMLIY NASSIDÆ.

**Nassa obsoleta,** Say.

No. 271. Two dry specimens from Pointe du Chêne, N. B.

**Nassa trivittata,** Say.

No. 272. Six dry specimens from Pictou, N. S.

FAMILY PURPURIDÆ.

**Purpura lapillus,** L.

No. 273. Six dry specimens from Métis, P. Q.
Also specimens in alcohol, with egg capsules.

FAMILY MURICIDÆ.

**Trophon scalariforme,** Gould.

No. 274. Five specimens from Métis, P. Q.

**Urosalpinx cinerea,** Say.

No. 275. Four specimens from Prince Edward Island.

FAMILY TURRIDÆ.

**Bela harpularia?** Couthuoy.

No. 276. Three specimens from Métis, P. Q.

FAMILY CANCELLARIADÆ.

**Admete viridula,** Fabricius.

No. 277. Five specimens from Murray Bay, P. Q.

FAMILY APORRHAIDÆ.

**Aporrhais occidentalis,** Beck.

No. 278. Ten specimens from Métis, P. Q.

FAMILY TURRITELLIDÆ.

**Turritella erosa,** Couthuoy.

No. 279. Four specimens from Métis, P. Q., dry.

**Turritella reticulata,** Mighels.

No. 280. Seven specimens from Gaspé, P. Q., dry.

FAMILY LACUNIDÆ.

**Lacuna vincta,** Montagu.

No. 281. Six specimens from the Bay of Fundy, dry.

FAMILY LITTORINIDÆ.

**Littorina littorea,** L.

No. 282. Five specimens from Prince Edward Island.
Four specimens from Cape Breton, N. S.
Seven specimens from Nova Scotia; all dry.

**Littorina rudis,** Maton.

No. 283. Nine specimens from the Bay of Fundy, dry.

**Littorina palliata,** Say.

No. 284. Seven specimens from Pictou, N. S.; dry.

FAMILY TRICHOTROPIDÆ.

**Trichotropis borealis,** Broderip & Sowerby.

No. 285. Five specimens from Métis, P. Q.; dry.

FAMILY NATICIDÆ.

**Natica clausa,** Broderip & Sowerby.

No. 286. Six specimens from Métis, P. Q.; dry,

**Lunatia heros,** Say. (Sp.)

No. 287. Eight specimens from Pictou, N. S.; dry.

**Lunatia triseriata,** Say. (Sp.)

No. 288. Four specimens from the Bay of Fundy; dry.

**Lunatia Grœnlandica,** Moller. (Sp.)

No. 289. Five specimens from Gaspé Bay, P. Q.; dry.

FAMILY VELUTINIDÆ.

**Velutina (Morvillia) undata,** Brown. (V. zonata, Gould,)

No. 290. Two specimens from Murray Bay, P. Q., dry.

**Velutina lævigata,** L.

No. 291. One dry specimen from Gaspé Bay, P. Q.

FAMILY CALYPTRÆIDÆ.

**Crepidula fornicata,** Lamarck.

No. 292. { Five specimens from Pictou, N. S., dry.
A few specimens in alcohol.

FAMILY TROCHIDÆ.

**Margarita cinerea,** Couthuoy.

No. 293. Six specimens from Métis, P. Q.; dry.

**Machœroplax varicosa,** Mighels. (Sp.)

No. 294. Five specimens from Métis, P. Q.; dry.

FAMILY TECTURIDÆ.—(Acmæidæ.)

**Acmæa testudinalis,** Muller.

No. 295. Six specimens from Tadoussac, P. Q.; dry.

FAMILY CHITONIDÆ.

**Amicula vestita,** Gray, var. **Emersoni,** Couthuoy.

No. 296. One specimen from Rivière du Loup, dry.

**Tonicella marmorea,** Fabricius.

No. 297. Two specimens from Gaspé Bay, P. Q.; dry.

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## CONCHIFERA.

FAMILY PHOLADIDÆ.

**Zirphæa crispata,** L.

No. 298. One specimen from Sable Island, near Halifax, N. S.; dry.

FAMILY SAXICAVIDÆ.

**Saxicava rugosa,** Lamarck.

No. 299. { Four specimens from Nova Scotia, dry.
Four specimens burrowing into nullipore, and one specimen in alcohol.

FAMILY MYIDÆ.

**Mya arenaria,** L.

No. 300. Several specimens from Gaspé and Métis, P. Q.; dry.
Two bottles full of specimens in alcohol.

**Mya truncata,** L.

No. 301. Seven specimens from Métis, P. Q.

**Cyrtodaria siliqua,** Spengler.

No. 301 (*a*) One perfect specimen, and three single valves, dry.

FAMILY ANATINIDÆ.

**Cochlodesma Leanum,** Conrad.

No. 302. Two specimens from Pictou, N. S.; dry.

**Lyonsia arenosa,** Möller.

No. 303. One specimen from Gaspé Bay, P. Q.; dry.

**Pandora (Kennerlia) glacialis,** Leach.

No. 304. One specimen from Gaspé Bay, P. Q.; dry.

FAMILY SOLENIDÆ.

**Ensatella Americana,** Gould. (Sp.)

No. 305. Seven specimens from Métis, P. Q.; dry.
One specimen in alcohol, locality not stated.

**Siliqua costata,** Say.

No. 306. Four specimens from the Bay of Fundy; dry.

FAMILY TELLINIDÆ.

**Macoma calcarea,** Chemnitz.

No. 307. One specimen from Gaspé Bay, P. Q.; dry.

**Macoma fragilis,** Fabricius. (Tellina Grœnlandica, Beck.)

No. 308. Four specimens from Tadoussac, P. Q.; dry.

**Macoma inflata,** Stimpson.

No. 309. Three specimens from Murray Bay, P. Q.; dry.

FAMILY PAPHIIDÆ.

**Ceronia deauratum,** Turton.

No. 310. Four specimens from Métis, P. Q.; dry.

FAMILY MACTRIDÆ.

**Mactra (Spisula) solidissima,** Dillwyn.

No. 311. Thirteen specimens from the Bay of Fundy; dry.

**Mactra (Spisula) ovalis,** Gould.

No. 312. One perfect specimen, and one single valve from Gaspé Bay, P. Q.

FAMILY VENERIDÆ.

**Mercenaria violacea,** Schumacher. (Venus mercenaria, Say.)

No. 313. One perfect specimen and six single valves, dry, from Pictou, N. S., and Prince Edward Island.
Also a bottle of specimens, locality not stated, in alcohol.

**Callista convexa,** Say. (Sp.)

No. 314. One specimen from Prince Edward Island, dry.

**Liocyma fluctuosa,** Gould.

No. 315. Three specimens from the Bradelle Bank, off P.E.I.; dry.

**Petricola pholadiformis,** Say.

No. 316. One specimen from Prince Edward Island; dry.

FAMILY ASTARTIDÆ.

**Astarte lactea,** Broderip & Sowerby.

No. 317. Two left valves, from Métis, P. Q.

**Astarte elliptica,** Brown.

No. 318. Four specimens from Métis, P. Q ; dry.

**Astarte Banksii,** Leach.

No. 319. Six specimens from Métis, P. Q.; dry.

FAMILY CYPRINIDÆ.

**Cyprina Islandica,** L.

No. 320. Three specimens from the Bay of Fundy; dry.

FAMILY CARDIADÆ.

**Serripes Grœnlandicus,** Gmelin.

No. 321. Five specimens from Métis, P. Q.; dry.

**Cardium pinnulatum,** Conrad.

No. 322. Two specimens from Gaspé Bay, P. Q.; dry.

**Cardium Islandicum,** L.

No. 323. Four specimens from Gaspé Bay, dry.

FAMILY UNIONIDÆ.

**Margaritana margaritifera,** L. (Fresh-water Pearl-mussel.)

No. 337 (*a*) Several specimens in alcohol, locality not stated, in one bottle.

FAMILY ARCIDÆ.

**Arca pectunculoides,** Scacchi.

No. 324. Two specimens from between Anticosti and Cape Rosier Lighthouse, in 200 fathoms mud; dry.

FAMILY LEDIDÆ.

**Yoldia myalis,** Couthuoy.

No. 325. Specimens from Nova Scotia; dry.

**Yoldia thraciæformis,** Storer.

No. 325 (*a*) Two specimens in alcohol.

**Yoldia sapotilla,** Gould.

No. 326. Two specimens from Pictou, N. S.; dry.

**Yoldia limatula,** Say.

No. 326 (*a*) Two specimens.

**Leda pernula,** Muller.

No. 327. Three specimens from Métis, P. Q.; dry.

**Leda minuta,** Muller.

No. 328. One specimen from Gaspé Bay, P. Q.

FAMILY NUCULIDÆ.

**Nucula tenuis,** Montagu.

No. 329. Two specimens from Labrador; dry.

FAMILY MYTILIDÆ.

**Crenella glandula,** Totten.

No, 330. Four specimens from Gaspé Bay, P. Q.; dry.

**Crenella pectinula,** Gould.

No. 331. Seven specimens from Murray Bay, P. Q.; dry.

**Modiolaria corrugata,** Stimpson.

No. 332. Four specimens from Murray Bay, P. Q ; dry.

**Modiolaria lævigata,** Gray.

No. 333. Two specimens from Gaspé Bay, P. Q.; dry.

**Modiolaria nigra,** Gray.

No. 334. Three specimens from Gaspé Bay, P. Q.; dry.

**Modiola plicatula,** Lamarck.

No. 335. Three specimens from Pictou, N. S., dry, and one bottle full of specimens in alcohol.

**Modiola modiolus,** L.

No. 336. Two specimens from Nova Scotia, dry, and a bottle full of specimens in alcohol.

**Mytilus edulis,** L.

No. 337. Five specimens from Métis, P. Q., dry, and two bottles full of specimens in alcohol.

FAMILY PECTINIDÆ.

**Pecten tenuicostatus,** Mighels. (P. Magellanicus, Lamarck.)

No. 338. Four dry specimens and nine in alcohol. The exact locality or localities of these are not stated, but the species ranges from Gaspé Bay southward to Cape Cod.

**Pecten Islandicus,** L.

No. 339. Five specimens from the northern part of the Gulf of St. Lawrence; dry.

**Pecten Grœnlandicus,** Sowerby.

No. 340. Three dry specimens, from between Cape Rosier, Gaspé and the S. W. point of Anticosti, in 200 fathoms mud.

FAMILY ANOMIADÆ.

**Anomia ephippium,** L.

No. 341. Two specimens from Prince Edward Island; dry.

FAMILY OSTREIDÆ.

**Ostrea Virginiana,** Lister, and var. **borealis,** Lamarck.
*American Oyster.*

No. 342. One cluster of the short form (variety *borealis*) and a number of the long and typical form; the latter from Prince Edward Island.

*B.* (From the Pacific Coast of Canada.)

CEPHALOPODA.

**Ommatostrephes,** Sp. Undt.

Specimens in alcohol.

GASTEROPODA.

FAMILY PURPURIDÆ.

**Cerostoma foliatum,** Gmelin.

Two specimens from the Queen Charlotte Islands; dry.

FAMILY TRITONIDÆ.

**Prieŋe Oregonensis,** Redfield.

No. 343. One specimen from near Victoria, V. I.; dry.

FAMILY NATICIDÆ.

**Lunatia Lewisii,** Gould.

No. 344. One specimen from near Victoria, V. I.; dry.

FAMLIY TROCHIDÆ.

**Pachypoma gibberosum,** Chemnitz.

No. 345. Two specimens from near Victoria, V. I.; dry.

FAMLY HALIOTIDÆ.

**Haliotis Kamtschatkana,** Jonas.

No. 345 (*a*) Three specimens from the Queen Charlotte Islands; dry.

FAMILY CHITONIDÆ,

**Katherina tunicata,** Gray.

No. 346. One specimen from near Victoria, V. I.; dry.

**Cryptochiton Stelleri,** Middendorf.

No. 347. One specimen from near Victoria, V. I., in alcohol.

## CONCHIFERA.

### Family Pholadidæ.

**Zirphæa crispata,** L.

No. 348. Two specimens from near Victoria, V. I., in alcohol.

### Family Anatinidæ.

**Lyonsia saxicola,** Baird.

No. 349. One specimen from near Victoria, V. I.; dry.

### Family Mactridæ.

**Schizothærus Nuttalli,** Conrad. (Tresus maximus, Midd.)

No. 350. Semi-fossil from Esquimalt Harbour, V. I.; two perfect specimens and two odd valves.

### Family Veneridæ.

**Saxidomus squalidus,** Deshayes.

No 351. Specimens from near Victoria, V. I., in alcohol.

### Family Cardiadæ.

**Cardium Nuttalli,** Conrad.

No. 352. Two specimens, dry, and a bottle full of specimens in alcohol.

### Family Mytilidæ.

**Mytilus Californianus,** Conrad.

No. 353. Four specimens from near Victoria, V. I.; dry.

**Mytilus edulis,** L.

No. 353 (*a*) Near Victoria, V. I.

**Modiola modiolus,** L.

No. 353 (*b*) Four specimens from near Victoria, V. I.; dry.

FAMILY PECTINIDÆ.

**Pecten caurinus,** Gould.

No. 355. One specimen from the Strait of Georgia; dry.

FAMILY SPONDYLIDÆ.

**Hinnites giganteus,** Gray.

No. 354. Three specimens from near Victoria, V. I.; dry.

FAMILY OSTREIDÆ.

**Ostrea lurida,** Carpenter.

No. 356. One large jar of specimens from near Victoria, V. I., in alcohol.

## BRACHIOPODA.

FAMILY TEREBRATULIDÆ.

**Terebratulina septentrionalis,** Couthuoy.

No. 357. { One dry specimen from the Bay of Fundy.
Three specimens in alcohol.

**Terebratella Spitzbergensis,** Davidson.

No. 358. Two specimens from Murray Bay, P. Q.; dry.

FAMILY RHYNCHONELLIDÆ.

**Rhynchonella psittacea,** Gmelin.

No. 359. Five specimens from Murray Bay, P. Q.; dry.

## TUNICATA.

FAMILY ASCIDIADÆ.

**Holocynthia pyriformis,** Rathke.

No. 360. One specimen from Métis, P. Q.

**Pelonaia arenifera,** Stimpson.

No. 361. Two specimens from the Straits of Northumberland, off Richibucto; dry.

**Boltenia Bolteni,** L.

No. 362. One specimen from Métis, P. Q., dry. Also one specimen in alcohol, locality not stated.

## POLYZOA.

**Escharopsis lobata,** Lamoroux. (Escharoides Sarsii, Smitt.)

No. 363. One specimen from the Orphan Bank, Gulf of St. Lawrence.

**Porella (Eschara) elegantula,** d'Orbigny.

No. 364. One specimen from the Orphan Bank, Gulf of St. Lawrence.

**Leieschara subgracile,** d'Orbigny.

No. 365. One specimen from the Gulf of St. Lawrence.

**Celleporaria surcularis,** Packard.

No. 366. One specimen from the Orphan Bank, Gulf of St. Lawrence.

## ECHINODERMATA.

### Order Holothuroidea.

**Psolus phantapus,** Oken.

No. 367. One dry specimen from Métis, P. Q. Also one in alcohol, locality not stated.

**Pentacta frondosa,** Jæger.

No. 368. One specimen from the Gulf of St. Lawrence, in alcohol.

### Order Echinoidea.

**Strongylocentrotus Drobachiensis,** Muller. (Sp)

No. 369. Three specimens from Métis, P. Q., dry; also two dry specimens and two bottles of specimens in alcohol, locality not stated, but from the Gulf of St. Lawrence or Atlantic coast of Canada.

**Loxechinus purpuratus,** Stimpson.

No. 370. Four specimens from near Victoria, V. I.; dry.

**Echinarachnius parma,** L.

No. 371. Six dry specimens from Gaspé, P. Q.
No. 176. Two dry specimens.

### Order Asteroidea.

**Asterias polaris,** Muller & Troschel.

No. 372. One dry specimen from Métis, P. Q.
No. 176. Another dry specimen.

**Asterias vulgaris,** Stimpson.

No. 373. Two specimens from Gaspé, P. Q.; dry.
Represented also in case No. 176.

**Asterias littoralis,** Stimpson.

No. 374. Two specimens from the Bay of Fundy; dry.
Represented also in case No. 176.

**Cribrella sanguinolenta,** Muller. (Sp.)

No. 375. Three dry specimens from Métis, P. Q.

**Crossaster papposus,** L. (Sp.)

No. 376. One specimen from the Gulf of St. Lawrence, dry, and another in case No. 176.

**Solaster endeca,** L.

No. 377. One specimen from Murray Bay, P. Q.; dry.

ORDER OPHIUROIDEA.

**Ophioglypha nodosa,** Lutken.

No. 378. Three specimens from Kamouraska, P. Q.; dry.

**Ophioglypha Sarsii,** Lutken.

No. 379. Two specimens from Kamouraska, P. Q ; dry.

**Ophiopholis aculeata,** Muller.

No. 380. Four specimens from Gaspé, P. Q.; also several specimens from the Gulf of St. Lawrence, in alcohol.

ORDER ASTROPHYTIDÆ.

**Astrophyton Agassizii,** Stimpson.

No. 381. One dry specimen from the Gulf of St. Lawrence.
No. 177. Another large specimen from the same locality.

## ANTHOZOA.

### Order Alcyonaria.

**Alcyonium rubiforme,** Ehrenberg.

No. 382. Two dry specimens from the Gulf of St. Lawrence.

**Pennatula aculeata,** Danielssen.

No. 383. Two specimens from between Cape Rosier and the S. W. point of Anticosti, in 200 fathoms mud; dry.

**Verrillia Blakei,** Stearns.

No. 384. Three specimens in alcohol, from Burrard's Inlet, B. C.

## PORIFERA.—(Sponges.)

### Order Silicea.

**Isodictya infundibuliformis?** (or **Phakellia** sp.)

No. 385. Two specimens from Métis, P. Q.; dry.

**Isodictya** (or **Phakellia**). Species undetermined.

No. 386. Four specimens from Métis, P. Q.

**Halichondria panicea,** L.

No. 387. Two specimens from Métis, P. Q.

### Order Keratosa.

**Chalina oculata,** Pallas.

No. 388. Three specimens from the Gulf of St. Lawrence.

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Also a number of sponges, undetermined, from Clayoquot Sound, Fort Rupert and Nootka Sound, V. I., and from Masset in the Queen Charlotte Islands.

# 1888.

An Act respecting a certain Treaty between Her Britannic Majesty and the President of the United States.

WHEREAS the treaty set forth in Schedule A to this Act, has been agreed upon between plenipotentiaries appointed by Her Majesty and by the President of the United States, and it is expedient that provision should be made by legislative enactment for giving effect to the same: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

**1.** This Act may may be cited as "*The Treaty of Washington Act*, 1888."

**2.** In this Act the expression "the treaty" means the Convention set forth in Schedule A hereto.

**3.** The treaty is hereby assented to.

**4.** United States fishing vessels entering the bays or harbors on the Atlantic coasts of Canada as to which the privilege of entering for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water was reserved to American fishermen under the convention between His late Majesty King George the Third and the United States of America, dated the twentieth day of October, one thousand eight hundred and eighteen, shall conform to harbor regulations common to them and to fishing vessels of Canada, but shall not be required to report, enter or clear at the Customs when putting into such bays or harbors for shelter or for repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or obtaining water; except that any United States fishing vessel entering the said bays or harbors for any of the purposes aforesaid and remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, shall report, enter and clear as if this Act had not been passed; but no provision in this section contained shall extend to excuse any person on board of any such vessel from giving to boarding officers any information required by law to be given.

**5.** Notwithstanding anything contained in "*The Pilotage Act*" or in any regulations made by any pilotage authority thereunder, no United States fishing vessel shall be liable

on entering the bays or harbors referred to in article one of the treaty to any compulsory pilotage dues; nor when therein for the purpose of shelter, of repairing damages, of purchasing wood or obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues or other similar dues: Provided always, that the enumeration in this section above set forth shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the said Convention of the twentieth day of October, one thousand eight hundred and eighteen, between His late Majesty King George the Third and the United States of America.

**6.** Any United States fishing vessel entering the ports, bays and harbors of the eastern and north-eastern coasts of Canada under stress of weather or in consequence of any casualty, may unload, reload, tranship or sell, (subject to Customs laws and regulations) all fish on board, when such unloading, transhipment or sale is necessary as incidental to repairs, and may replenish outfits, provisions and supplies damaged or lost by disaster; and in case of death or sickness any such vessel shall be allowed all needful facilities, including the shipping of crews.

**7.** The Minister of Marine and Fisheries and any officers of the Government of Canada whom he may authorize for that purpose, shall grant promptly, and upon application, and without charge, licenses to United States fishing vessels to purchase in established ports of entry of the aforesaid coasts of Canada, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, and any such vessel, having obtained a license in the manner aforesaid, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to trading vessels: Provided always, that no such provisions or supplies shall be obtained by barter, or purchased for resale or traffic. Such licenses may be in any form to be approved by the Governor in Council.

**8.** No United States fishing vessel shall be entitled to receive any such license as in the next preceding section mentioned, unless such vessel has conformed to the provisions of article thirteen of the treaty.

**9.** Notwithstanding anything contained in the "*Act respecting fishing by foreign vessels*" the penalty for preparing, in the waters, bays, creeks and harbors (as to which the United States by the aforesaid Convention of one thousand eight hundred and eighteen renounced any liberty previously enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish) to unlawfully fish in such waters shall be in the discretion of the court mentioned in

the said Act, but shall not exceed that prescribed by the said Act for unlawfully fishing therein; and for any violation of the laws of Great Britain or of Canada relating to the right of fishery in such waters, bays, creeks or harbors, other than the offence of preparing to fish as aforesaid, and other than the offence of unlawfully fishing therein, to which latter offence the existing penalties shall continue to apply, penalties may be imposed by the court not exceeding in all three dollars for every ton of the boat or vessel concerned, and the boat or vessel shall be holden therefor and shall be made answerable for such penalty according to the procedure and practice of the court.

**10.** All proceedings for the recovery of any penalty or the enforcement of any forfeiture under this Act or under the "*Act respecting fishing by foreign vessels*" shall be conducted in a summary manner and shall be as inexpensive as practicable; and every suit, action or proceeding for the recovery of any such penalty or the enforcement of any such forfeiture shall, except as respects the appeal hereinafter provided for, be tried or heard by the proper Court of Vice-Admiralty at the place where the boat or vessel concerned is detained, unless the judge of such court, on application on the part of the defence, shall order the case to be tried at some other place adjudged by him to be more convenient:

2. No security for costs shall be required on the part of the defence except when bail is offered. In all cases such bail as the court deems reasonable shall be accepted, according to the practice of the court:

3. An appeal shall lie, at the instance of the person accused only, from the Court of Vice-Admiralty to the Supreme Court of Canada; and on every such appeal the evidence adduced at the trial of the case before the Court of Vice-Admiralty may be used.

**11.** All judgments involving forfeiture shall be reviewed by the Governor in Council before the same are carried into effect.

**12.** Whenever the United States by law remove the duties payable on the entry into the United States of fish oil, whale oil, seal oil and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada, as well as from the usual and necessary casks, barrels, kegs, cans and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same as above described, shall be admitted free of duty into Canada:

2. Upon such removal of duties, and so long as the aforesaid articles are allowed to be carried into the United States by all subjects of Her Majesty, without duty being re-imposed thereon, and so long as like privileges are continued or given to fishing vessels of Canada on the Atlantic coasts of the United States, the privilege of entering the ports, bays and harbors of the coasts of Canada aforesaid, shall be accorded to United States fishing vessels by annual licenses, free of charge, for the following purposes :—

(*a.*) The purchase of provisions, bait, ice, seines, lines and all other supplies and outfits ;

(*b.*) Transhipment of catch for transport by any means of conveyance ;

(*c.*) Shipping of crews :

3. In such case no supplies shall be obtained by barter, but bait may be so obtained.

**13.** The foregoing provisions of this Act shall come into force and take effect from and after a day to be named by proclamation of the Governor General.

**14.** For the purpose of carrying into effect the protocol set forth in Schedule B to this Act it is hereby enacted that pending the exchange of ratifications mentioned in article sixteen of the treaty, and for a period not exceeding two years from the fifteenth day of February, one thousand eight hundred and eighty-eight, the privilege of entering the bays and harbors of the Atlantic coasts of Canada shall be granted to United States fishing vessels by annual licenses at a fee of one dollar and fifty cents per ton, for the following purposes :—

(*a.*) The purchase of bait, ice, seines, lines and all other supplies and outfits ;

(*b.*) Transhipment of catch and shipping of crews :

2. If during the continuance of such arrangement the United States remove the duties on fish, fish oil, whale oil and seal oil, as well as on the necessary casks, barrels, kegs, cans and other usual and necessary coverings containing them, as in section twelve of this Act set forth, such licenses shall be issued free of charge by such officers and in such form as the Governor in Council may determine :

3. No United States fishing vessel entering the bays and harbors of the Atlantic coast of Canada for any of the four purposes mentioned in article one of the Convention of the twentieth day of October, one thousand eight hundred and

eighteen, and not remaining therein more than twenty-four hours, shall be required to enter or clear at the Customs, provided that such vessel does not communicate with the shore:

4. No United States fishing vessel shall be subject to forfeiture under the "*Act respecting fishing by foreign vessels*" except for the offences of fishing or preparing to fish in the waters referred to in section nine of this Act:

5. This section shall cease to have any force or effect if the treaty is rejected by the Senate of the United States, and if by proclamation the Governor General declares this section to be no longer in operation. The day from and after which, in such case, this section shall cease to have force and effect shall be a day to be named in such proclamation.

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## SCHEDULE A.

Whereas differences have arisen concerning the interpretation of Article I of the Convention of October 20, 1818; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, being mutually desirous of removing all causes of misunderstanding in relation thereto, and of promoting friendly intercourse and good neighborhood between the United States and the Possessions of Her Majesty in North America, have resolved to conclude a treaty to that end, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, The Right Hon. Joseph Chamberlain, M. P.; The Honorable Sir Lionel Sackville Sackville West, K. C. M. G., Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and Sir Charles Tupper, G. C. M. G., C. B., Minister of Finance of the Dominion of Canada:

And the President of the United States, Thomas F. Bayard, Secretary of State; William L. Putnam, of Maine; and James B. Angell, of Michigan;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

### Article I.

The High Contracting Parties agree to appoint a Mixed Commission to delimit, in the manner provided in this treaty, the British waters, bays, creeks and harbors of the

coasts of Canada and of Newfoundland, as to which the United States, by Article I of the Convention of October 20, 1818, between Great Britain and the United States, renounced for ever any liberty to take, dry, or cure fish.

### Article II.

The Commission shall consist of two Commissioners to be named by Her Britannic Majesty, and of two Commissioners to be named by the President of the United States, without delay, after the exchange of ratifications of this treaty.

The Commission shall meet and complete the delimitation as soon as possible thereafter.

In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act as such, the President of the United States or Her Britannic Majesty, respectively, shall forthwith name another person to act as Commissioner instead of the Commissioner originally named.

### Article III.

The delimitation referred to in Article I of this treaty shall be marked upon British Admiralty charts by a series of lines regularly numbered and duly described. The charts so marked shall, on the termination of the work of the Commission, be signed by the Commissioners in quadruplicate, three copies whereof shall be delivered to Her Majesty's Government, and one copy to the Secretary of State of the United States. The delimitation shall be made in the following manner, and shall be accepted by both the High Contracting Parties as applicable for all purposes under Article I of the Convention of October 20, 1818, between Great Britain and the United States.

The three marine miles mentioned in Article I of the Convention of October 20, 1818, shall be measured seaward from low water mark; but at every bay, creek, or harbor, not otherwise specially provided for in this treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor in the part nearest the entrance at the first point where the width does not exceed ten marine miles.

### Article IV.

At or near the following bays the limits of exclusion under Article I of the Convention of October 20, 1818, at points more than three marine miles from the low water mark, shall be established by the following lines, namely:

At the Baie des Chaleurs the line from the Light at Birch Point on Miscou Island to Macquereau Point Light; at the

Bay of Miramichi, the line from the Light at Point Escuminac to the Light on the Eastern Point of Tabisintac Gully; at Egmont Bay, in Prince Edward Island, the line from the Light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from Cape Smoke to the Light at Point Aconi.

At Fortune Bay, in Newfoundland, the line from Connaigre Head to the Light on the South-easterly end of Brunet Island, thence to Fortune Head; at Sir Charles Hamilton Sound, the line from the South-east point of Cape Fogo to White Island, thence to North end of Peckford Island, and from the South end of Peckford Island to the East Headland of Ragged Harbor.

At or near the following bays the limits of exclusion shall be three marine miles seaward from the following lines, namely:

At or near Barrington Bay, in Nova Scotia, the line from the Light on Stoddard Island to the Light on the South Point of Cape Sable, thence to the Light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; at Mira Bay, the line from the Light on the East Point of Scatari Island to the North-easterly Point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the Eastern mainland shore, to the most Southerly Point of Red Island, thence by the most Southerly Point of Merasheen Island to the mainland.

Long Island and Bryer Island, at St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bay.

ARTICLE V.

Nothing in this treaty shall be construed to include within the common waters any such interior portions of any bays, creeks or harbors as cannot be reached from the sea without passing within the three marine miles mentioned in Article I of the Convention of October 20, 1818.

ARTICLE VI.

The Commissioners shall from time to time report to each of the High Contracting Parties such lines as they may have agreed upon, numbered, described, and marked as herein provided, with quadruplicate charts thereof; which lines so reported shall forthwith from time to time be simultaneously proclaimed by the High Contracting Parties, and be binding after two months from such proclamation.

## Article VII.

Any disagreement of the Commissioners shall forthwith be referred to an Umpire selected by Her Britannic Majesty's Minister at Washington and the Secretary of State of the United States; and his decision shall be final.

## Article VIII.

Each of the High Contracting Parties shall pay its own Commissioners and officers. All other expenses jointly incurred, in connection with the performance of the work, including compensation to the Umpire, shall be paid by the High Contracting Parties in equal moieties.

## Article IX.

Nothing in this treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing vessels of the United States.

## Article X.

United States fishing vessels entering the bays or harbors referred to in Article I of this treaty shall conform to harbor regulations common to them and to fishing vessels of Canada or Newfoundland.

They need not report, enter, or clear, when putting into such bays or harbors for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vesssel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

They shall not be liable in such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20, 1818.

## Article XI.

United States fishing vessels entering the ports, bays and harbors of the Eastern and North-eastern coasts of Canada or of the coasts of Newfoundland under stress of weather or other casualty, may unload, reload, tranship or sell, subject to Customs laws and regulations, all fish on board, when such

unloading, transhipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.

Licenses to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States fishing vessels in such ports promptly upon application and without charge, and such vessels, having obtained licenses in the manner aforesaid, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to trading vessels; but such provisions or supplies shall not be obtained by barter, nor purchased for re-sale or traffic

ARTICLE XII.

Fishing vessels of Canada and Newfoundland shall have on the Atlantic coasts of the United States all the privileges reserved and secured by this Treaty to United States fishing vessels in the aforesaid waters of Canada and Newfoundland.

ARTICLE XIII.

The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States fishing vessel, of its official number on each bow; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licenses provided for in this treaty.

Such regulations shall be communicated to Her Majesty's Government previously to their taking effect.

ARTICLE XIV.

The penalties for unlawfully fishing in the waters, bays, creeks, and harbors, referred to in Article I of this treaty, may extend to forfeiture of the boat or vessel and appurtenances, and also of the supplies and cargo aboard when the offence was committed; and for preparing in such waters to unlawfully fish therein, penalties shall be fixed by the court, not to exceed those for unlawfully fishing; and for any other violation of the laws of Great Britain, Canada, or Newfoundland relating to the right of fishery in such waters, bays, creeks, or harbors, penalties shall be fixed by the court, not exceeding in all three dollars for every ton of the boat or vessel concerned. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the judge shall, on request of the defence, order it to be held at some other place adjudged by him more convenient. Security for costs shall not be required of the defence, except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals available to the defence only; and the evidence at the trial may be used on appeal.

Judgments of forfeiture shall be reviewed by the Governor General of Canada in Council, or the Governor in Council of Newfoundland, before the same are executed.

ARTICLE XV.

Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and of Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays and harbors of the aforesaid coasts of Canada and of Newfoundland shall be accorded to United States fishing vessels by annual licenses, free of charge, for the following purposes, namely:

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;

2. Transhipment of catch, for transport by any means of conveyance;

3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be so obtained.

The like privileges shall be continued or given to fishing vessels of Canada and of Newfoundland on the Atlantic coasts of the United States.

ARTICLE XVI.

This treaty shall be ratified by Her Britannic Majesty, having received the assent of the Parliament of Canada and of the Legislature of Newfoundland; and by the President

of the United States, by and with the advice and consent of the Senate; and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, We, the respective Plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, this fifteenth day of February, in the year of Our Lord one thousand eight hundred and eighty-eight.

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## SCHEDULE B.

### PROTOCOL.

The treaty having been signed the British Plenipotentiaries desire to state that they have been considering the position which will be created by the immediate commencement of the fishing season before the treaty can possibly be ratified by the Senate of the United States, by the Parliament of Canada, and the Legislature of Newfoundland.

In the absence of such ratification the old conditions which have given rise to so much friction and irritation might be revived, and might interfere with the unprejudiced consideration of the treaty by the legislative bodies concerned.

Under these circumstances, and with the further object of affording evidence of their anxious desire to promote good feeling and to remove all possible subjects of controversy, the British Plenipotentiaries are ready to make the following temporary arrangement for a period not exceeding two years, in order to afford a *modus vivendi* pending the ratification of the treaty.

1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbors of the Atlantic coasts of Canada and of Newfoundland shall be granted to United States fishing vessels by annual licenses at a fee of $1.50 per ton—for the following purposes :—

The purchase of bait, ice, seines, lines, and all other supplies and outfits ;

Transhipment of catch and shipping of crews.

2. If during the continuance of this arrangement, the United States should remove the duties on fish, fish-oil, whale and seal oil (and their coverings, packages, &c.,), the said licenses shall be issued free of charge.

3. United States fishing vessels entering the bays and harbors of the Atlantic coasts of Canada or of Newfoundland for any of the four purposes mentioned in Article I of the Convention of October 20, 1818, and not remaining therein

more than twenty-four hours, shall not be required to enter or clear at the Custom house, providing that they do not communicate with the shore.

4. Forfeiture to be exacted only for the offences of fishing or preparing to fish in territorial waters.

5. This arrangement to take effect as soon as the necessary measures can be completed by the colonial authorities.

J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

WASHINGTON, 15th February, 1888.